Circuit Court for Baltimore County
Case No. C-03-CR-19-003034

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1888

September Term, 2023

DION D'ANGELO BOLER

v.

STATE OF MARYLAND

Friedman,
Ripken,
Kehoe, S.,

JJ.

Opinion by Kehoe, J.

Filed: July 22, 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).

In August 2019, Dion D'Angelo Boler ("Mr. Boler"), appellant, was charged with murder in the first degree, conspiracy to commit murder in the first degree, assault in the first degree, use of a firearm in the commission of a crime of violence, and related handgun offenses. In November 2021, a jury in the Circuit Court for Baltimore County acquitted Mr. Boler of first-degree murder, conspiracy to commit first-degree murder, and wearing, carrying, or transporting a handgun on or about his person. The jury found Mr. Boler guilty of illegal possession of a regulated firearm, and it failed to reach a verdict on charges of second-degree murder and use of a firearm in the commission of a crime of violence. A retrial on the remaining charges was initially scheduled for October 18, 2022, but was rescheduled for April 17, 2023.

Mr. Boler filed, pro se, a motion to dismiss, asserting a speedy trial violation. Just prior to the start of the retrial, the court held a hearing on that motion and denied it. In the retrial, the jury found Mr. Boler guilty of murder in the second degree and use of a firearm in the commission of a crime of violence.

Mr. Boler filed a motion for a new trial and subsequently, two supplements to that motion. The court denied the motion for new trial and imposed consecutive sentences totaling sixty-five years of active incarceration (the maximum possible sentence). Mr. Boler then noted an appeal, raising three questions:

> I. Did the circuit court abuse its discretion by denying Mr. Boler's motion for a new trial, in which he argued that he was unfairly prejudiced by the firearm expert's inadmissible testimony?
>
> II. Did the circuit court err by denying Mr. Boler's motion to dismiss the indictment due to violation of his right to a speedy trial?

III. Did the circuit court err by excluding testimony that suggested alternate suspects and motive?

Finding neither error nor abuse of discretion, we affirm the judgments.

BACKGROUND

On June 16, 2019, a woman was walking her dog in Patapsco Valley State Park in western Baltimore County when she discovered a partially buried body in a remote section of the park. The decedent was subsequently identified by fingerprint analysis as Glenroy Copeland. Mr. Copeland had been last seen alive by his mother, Martesha Copeland, on June 7, 2019.

Mr. Copeland sustained four gunshot wounds, two of which were "rapidly fatal," and two of which were "potentially fatal." Three bullets were recovered from his body during the autopsy. The cause of death was multiple gunshot wounds, and the manner of death was homicide.

Police officers received a break in their investigation when they realized that a .40 caliber Ruger semiautomatic handgun, that had been found five days previously in a stream near where Mr. Copeland's body was found, was linked to the murder.[1] When the handgun was recovered, it contained four red-tipped cartridges, which the lead detective later would say that she had never seen before in her entire career. The police officer called to the scene to recover the handgun ran its serial number and determined that it had been reported stolen

[1] The handgun had been discovered on June 11, 2019, by a man who was walking through the park. That man was accompanied by his girlfriend and her son, and she called 911 to report what they had found.

by the Shelby, Michigan Police Department in August 2018.[2] Toolmark analysis indicated that the bullets recovered during Mr. Copeland's autopsy could have been fired[3] from the handgun found in the stream.

Detectives interviewed associates of Mr. Copeland and learned that he was involved in the sale of illegal drugs. Following that lead, they developed Mr. Boler and an associate, Renardo Whitehead ("Mr. Whitehead"), as suspects in the murder. On June 20, 2019, Mr. Boler and Mr. Whitehead were arrested in Howard County on charges of possession of CDS with intent to distribute. That led to the police obtaining warrants to extract data from their cell phones and to collect call detail records from their cell phone providers. Among the items recovered from Mr. Whitehead's phone was a photograph, depicting him with a handgun and red-tipped cartridges that looked identical to the items recovered near the crime scene, that he sent by text message to Mr. Boler. In that text message, Mr. Whitehead expressed his interest in buying the handgun from Mr. Boler. Analysis of the call detail records placed Mr. Boler and Mr. Whitehead in Patapsco Valley State Park in the vicinity of where Mr. Copeland's body was found, on the date he was last seen alive.[4]

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[2] Mr. Boler previously lived in Michigan and was known to visit there.]

[3] As we shall discuss, the toolmark expert was not so circumspect in his conclusions. The expert later would testify, unequivocally, that the bullets recovered from Mr. Copeland's autopsy had been fired from that handgun.

[4] A cell phone belonging to Mr. Boler's girlfriend, Flora Okobi, was also found to have been near the murder scene the day after Mr. Copeland disappeared. Police theorized that Mr. Boler had lost his cell phone on the day of the murder and borrowed Ms. Okobi's when he returned the following day to bury the body.

On August 1, 2019, Mr. Boler and his girlfriend, Flora Okobi ("Ms. Okobi"), were located leaving her residence in Columbia and were arrested. Mr. Boler was taken to Baltimore County Police Headquarters, where he was given *Miranda* advisements and then interrogated. Mr. Boler initially denied ever going to Patapsco Valley State Park. He later admitted that he had borrowed Ms. Okobi's cell phone, which was determined to have been at the murder scene the day after Mr. Copeland disappeared, and Ms. Okobi corroborated that fact. Mr. Boler eventually made an inculpatory admission, exclaiming, "like, at the end of the day, my life is over with[,]" and, "I don't, I don't care. I just know my life is through."

On August 26, 2019, an eight-count indictment was filed, in the Circuit Court for Baltimore County, charging Mr. Boler with (1) murder in the first degree; (2) conspiracy to commit murder in the first degree; (3) assault in the first degree; (4) use of a firearm in the commission of a crime of violence; (5) carrying a loaded handgun on or about his person; (6) wearing, carrying, or transporting a handgun on or about his person; (7) knowing possession of a regulated firearm after having been convicted previously of a disqualifying offense; and (8) possession of ammunition by a person disqualified from possessing a regulated firearm.

Initially, trial was scheduled to begin on February 18, 2020, but the parties agreed to a postponement beyond the *Hicks* date,[5] and the administrative judge found good cause

[5] Named after *State v. Hicks*, 285 Md. 310 (1979), the "*Hicks* date" is provided under Criminal Procedure Article, § 6-103 and Maryland Rule 4-271 and requires generally that a trial date in a criminal case be set no later than 180 days after the earlier of a (continued)

for doing so, because it was determined that Mr. Boler and his co-defendant, Mr. Whitehead, should have separate trials. A new trial date of December 14, 2020, was set.

In March 2020, lockdowns were ordered throughout the State because of the COVID pandemic. Among other things, the Chief Judge of the Court of Appeals[6] issued an Administrative Order, providing that all jury trials shall be suspended, effective March 16, 2020.[7] There would be several periods thereafter during which jury trials were suspended. Ultimately, a jury trial was held from November 2, 2021, through November 9, 2021. The proceedings concluded with a partial verdict: the jury acquitted Mr. Boler of first-degree murder, conspiracy to commit first-degree murder, and wearing, carrying, or transporting a handgun on or about his person, found him guilty of illegal possession of a regulated firearm, and failed to reach a verdict on charges of second-degree murder and use of a firearm in the commission of a crime of violence. A mistrial was declared.

Retrial on the remaining charges was scheduled initially for October 18, 2022, but trial was postponed because one of the prosecutors had symptoms of COVID shortly before the scheduled date. During the period between the first and second trials, Mr. Boler filed

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defendant's initial appearance or his attorney's entry of appearance. Failure to do so results in dismissal of the charges, unless a defendant "seeks or expressly consents" to a trial date beyond the *Hicks* date. *Jackson v. State*, 485 Md. 1, 15-16 (2023).

[6] Now known as the Chief Justice of the Supreme Court of Maryland.

[7] *Final Administrative Order on Jury Trials and Grand Juries During the COVID-19 Emergency*, at 2 ¶ (b) (filed Mar. 28, 2022) (available at https://www.mdcourts.gov/sites/default/files/admin-orders/20220328finalonjurytrialsandgrandjuriesduringthecovid19emergency.pdf) (last visited Jun. 30, 2025) (hereafter "*Administrative Order*").

several pro se motions to dismiss, contending that he had been denied his right to a speedy trial.

Retrial ultimately began on April 17, 2023, and concluded on April 21, 2023. At the outset, prior to jury selection, the court heard argument on the motion to dismiss and denied it. The State called nineteen witnesses. Mr. Boler exercised his constitutional right not to testify. The jury found Mr. Boler guilty of second-degree murder and use of a firearm in the commission of a crime of violence.

Three days after the verdict, Mr. Boler filed a motion for new trial, which he supplemented several weeks later. Shortly before the scheduled sentencing hearing, Mr. Boler filed a second supplement to his motion for new trial, relying in part upon a then newly-issued decision by the Supreme Court of Maryland, *Abruquah v. State*, 483 Md. 637 (2023) (hereinafter "*Abruquah II"*), which applied the *Daubert-Rochkind* standard for admissibility of expert opinion testimony (which itself had been recently adopted) to hold that the trial court in that case had erred in permitting a toolmark identification expert to render an "unqualified opinion that four bullets and one bullet fragment found at the crime scene" had been fired from the defendant's handgun. *Id.* at 696. A toolmark identification expert testified at Mr. Boler's retrial. The court postponed the sentencing hearing until November 2023 at the request of both parties so that they could prepare to address the effect of *Abruquah II* on the case.

The circuit court denied the motion for new trial and imposed consecutive sentences of forty years' imprisonment for second-degree murder, twenty years' imprisonment for use of a firearm in the commission of a crime of violence, and five years' imprisonment for illegal possession of a regulated firearm by a prohibited person. Mr. Boler then noted a timely appeal.

Additional facts are included where pertinent to the discussion of the issues.

DISCUSSION

I.

Parties' Contentions

Mr. Boler contends that the trial court abused its discretion in denying his motion for new trial "because the firearm expert gave prejudicial testimony that should not have been admitted." Mr. Boler maintains that the toolmark expert in his case gave testimony that was virtually indistinguishable from testimony that had been held inadmissible in *Abruquah II*, *supra*, 483 Md. 637.

According to Mr. Boler, the trial court "abused its discretion in two ways" in denying his motion for new trial: First, the trial court erred in distinguishing the testimony and evidence in this case from that in *Abruquah II*; and second, the trial court erred in concluding that *Abruquah II* applies only to pretrial *Daubert-Rochkind* hearings and not to motions for new trial. Furthermore, relying upon *Merritt v. State*, 367 Md. 17 (2001), Mr. Boler maintains that we should review the erroneous admission into evidence of the expert's testimony under a harmless error standard because his trial took place prior to the decision in *Abruquah II*, and therefore, his defense counsel could not have discovered the error until after that decision was rendered. Mr. Boler avers that "he raised the issue at his next available opportunity – his motion for new trial." Finally, he asserts that the *Abruquah*

II error in this case was not harmless because "the expert's testimony was the only direct evidence linking the gun to the shooting."

The State acknowledges that "the expert offered an opinion currently forbidden by *Abruquah* [*II*]" but contends that *Rochkind* itself, decided more than two years prior to retrial in this case, should have alerted defense counsel that Maryland law governing the admissibility of expert opinion was undergoing a radical departure from past practice and that, therefore, defense counsel was constructively on notice that he had a viable challenge to the admissibility of the toolmark examiner's testimony prior to trial. Thus, the State asserts, we should find that the issue was waived by the failure to raise it earlier in the proceedings, especially because a timely objection would have prevented the error, and the grant of a new trial would be greatly prejudicial to the State.[8]

Additional Facts Pertaining to the Claim

At the time of retrial in this case, *Abruquah II* was pending before the Supreme Court of Maryland. *Abruquah v. State*, 479 Md. 63 (2022) (granting certiorari to consider whether toolmark identification is sufficiently reliable to allow a firearms examiner to testify, without qualification, that a specific firearm was used to fire an unknown projectile). The defense did not request a *Daubert-Rochkind* hearing prior to trial, despite

[8] According to the State, Mr. Boler's discussion of *Merritt* is "irrelevant" because "it cannot be said that the asserted error occurred through no fault of [his] own." The State maintains that this case does not involve "an unexpected error at trial" but, rather, the defense's "inadequate" trial preparation.

having been provided with a summary of the State's toolmark expert's conclusions during discovery.

The State's ballistic expert, Jason Birchfield ("Mr. Birchfield"), testified at Mr. Boler's retrial about the toolmark analysis he had performed on the projectile fragments recovered from the murder scene:

> MR. BIRCHFIELD: Well, initially, I look at my questioned evidence first on the microscope and see if all the class characteristics are corresponding and then, look at individual characteristics to see if I, I can compare those as having been fired from the same firearm. Once I do that, then I examine my test-fires to each one of those question bullets to, again, see if I can render an opinion that all the same class characteristics are corresponding and that there is sufficient agreement of individual characteristics to render a conclusion of were these question bullets and bullet fragments fired from K-1 from that firearm.
>
> [PROSECUTOR]: Okay. And K-1 is—what does K-1 refer to?
>
> MR. BIRCHFIELD: K-1 refers to—just like I rename these items as QB or QBF, the firearm was collected as 4147001. When I examine that, that now becomes K-1 for Known-1. That's a known source, so it becomes K-1.
>
> [PROSECUTOR]: Okay. **And were you able to um, come to a conclusion, within a reasonable degree of professional certainty, as to whether QBF1, QB3 and QB4 were, in fact, fired from the firearm you have sitting in front of you?**
>
> MR. BIRCHFIELD: **Yes. I was.**
>
> [PROSECUTOR]: **And what was that conclusion?**
>
> MR. BIRCHFIELD: **QBF1, QB3 and QB4 were fired from this firearm, K-1.**
>
> [PROSECUTOR]: Okay. Is it the one you're holding up right now?
>
> MR. BIRCHFIELD: Yes. It is.
>
> [PROSECUTOR]: Okay. And what's the basis of that opinion?

> MR. BIRCHFIELD: A correspondence of all class characteristics and sufficient agreement of individual characteristics.
>
> [PROSECUTOR]: And, and what is sufficient agreement mean?
>
> MR. BIRCHFIELD: Sufficient agreement basically means that it exists between two toolmarks that there's agreement of quantity and quality, that the likelihood another tool could have made the mark is remote. And sufficient agreement is related to the significant duplication of random toolmarks as evidenced by a pattern or combination of patterns of surface contours.

(Emphasis added.)

Defense counsel did not object. On April 24, 2023, the jury found Mr. Boler guilty of second-degree murder and use of a firearm in the commission of a crime of violence, based in part on that testimony.

On April 24, 2023, Mr. Boler filed a motion for new trial, asserting various grounds not pertinent to the claim before us. The court scheduled a hearing on the motion for June 26, 2023. On May 15, 2023, Mr. Boler filed a supplement to the motion for new trial, further bolstering arguments raised in his initial motion. One week later, on May 22, 2023, the State filed a response to both the original motion and the first supplement.

On June 20, 2023, the Supreme Court of Maryland rendered its decision in *Abruquah II*, 483 Md. 637, holding that, although toolmark identification "can support reliable conclusions that patterns and markings on bullets are consistent or inconsistent with those on bullets fired from a particular firearm," that methodology does not "reliably support an unqualified conclusion that such bullets were fired from a particular firearm." *Id.* at 648. Two days later, on June 22, 2023, sixty-two days after the verdict, Mr. Boler filed a second supplement to his motion for new trial, asserting that the trial court had erred in admitting Mr. Birchfield's testimony and that he was entitled to a new trial. The circuit court rescheduled the hearing until November 2, 2023, to afford the State an opportunity to respond.

Six days before the hearing, the State filed its response to the second supplemental motion for new trial. The State raised two principal arguments: first, that a motion for new trial was not "the proper avenue of relief" because "whatever guidance that issued [from *Abruquah II*] could not have been contemplated during or prior to" trial; and second, the facts in this case "are distinguishable from the facts alleged in *Abruquah* [*II*]."

After a hearing, the circuit court denied the motion(s) for new trial, stating:

> And while I appreciate very much the arguments on behalf of Mr. Boler in terms of the case law that has come down in terms of the firearms examiner, the Court concurs with the State in terms of both the legal posture of this case as well as the qualification that the expert in this particular case testified to. This Court believes that the way in which this examiner testified is different in terms of the qualification than what the Supreme Court indicated in their Decision; and moreover, that was itself in a different posture in terms of the argument as to admissibility and what the Court should have done at an evidentiary hearing. That is not what we had in this particular case, and thus, I don't believe a Motion for New Trial is the appropriate way in which to attack the um, allowance of this testimony. Moreover, I would also indicate, and I think it's very important to distinguish factually the case that came before the Supreme Court in terms of firearms' examination and what we have here. Because in addition to the qualification testimony of the expert, there was also very particularized ammunition that was used in this case. Um, that in and of itself, the Court heard significant testimony about how very unusual this particular ammunition was with the red tip. In fact, the [expert] witness testified that the witness had not seen this particular type of ammunition previously. And that was the very ammunition not only that was used, but was discussed between the Defendant and the Co-Defendant, and photographed and shared between the Defendant and the Co-Defendant. And that, in and of itself, particularized this particular ammunition used, and as a result, connected specifically to the Defendant and the Co-Defendant the

> ammunition that was used, and thus, recovered from the scene. So, for all of those reasons particularized to this case, the Court denies the Motion for New Trial.

Analysis

On January 9, 2026, we issued an Order staying this appeal pending the Supreme Court of Maryland's decision in *State of Maryland v. William Thornton and James Dunbar*, ___ A.3d. ____, No. 46, Sept. Term, 2025, 2026 WL 1846743 (Md. June 26, 2026), revised on Motion for Reconsideration on July 21, 2026 ("*State v. Thornton*" or "*Thornton*"). *Thornton* presented the following issue:

> Did the Appellate Court err by holding that *Abruquah* [*II*], required firearm identification evidence to be excluded when the trial occurred before *Abruquah* [*II*], the issue was not preserved for appellate review, and the State, as the proponent, had no opportunity to litigate the evidence's reliability in a *Daubert-Rochkind* hearing?

The Supreme Court issued its decision in *Thornton* on June 26, 2026, revised on Motion for Reconsideration on July 21, 2026. *See id.*

On August 28, 2020, in *Rochkind v. Stevenson*, our Supreme Court adopted the *Daubert* standard for the admissibility of expert testimony. 471 Md. 1, 26. *Daubert* rejected the "generally accepted" standard for the admissibility of expert testimony in favor of a standard that looked at whether the methodology is scientifically valid and whether that reasoning or methodology could be applied to the case. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579, 597 (1993).

On October 27, 2020, our Supreme Court issued the following Order in *Abruquah v. State*:

> ORDERED, by the Court of Appeals of Maryland, that the judgment of the Court of Special Appeals is vacated and the case is remanded to that Court with direction to remand the case to the Circuit Court for Prince George's County, pursuant to Maryland Rule 8-604(d)(1) without affirming or reversing the judgment of the Circuit Court, in order for the Circuit Court to consider whether, in light of this Court's decision in *Rochkind v. Stevenson*, No. 47 (September Term, 2019), the Circuit Court would reach a different conclusion concerning the admission of firearm and toolmark identification testimony based on the extensive hearing already conducted by the Circuit Court and such further proceedings, if any, that the Circuit Court deems necessary.

471 Md. 249, 250 (2020) (hereinafter "*Abruquah I*").

After retrial, on June 3, 2022, our Supreme Court granted a petition for writ of certiorari in *Abruquah*,479 Md. 63. On June 20, 2023, our Supreme Court issued its second decision in *Abruquah II*, in which it held that it was an abuse of discretion by the trial court to allow for an unqualified opinion that a bullet found at the crime scene was fired from the defendant's gun. 483 Md. at 696–97.

A comparison of the timeline in *Thornton* with the timeline in this case is instructive. The trial in *Thornton* began in November 2022, with the jury entering its verdict on December 6, 2022. *See Dunbar v. State*, Nos. 611, 639, 1598, Sept. Term, 2023 2025 WL 2027549, *3 (Md. App. Ct. July 21, 2025).[9] On December 14, 2022, Thornton filed his first motion for new trial pursuant to Rule 4-331(a). 2026 WL 1846743 at *5. As noted, the

[9] Mr. Thornton, James Dunbar ("Mr. Dunbar"), and Shamar Jerry ("Mr. Jerry") faced a joint jury trial as co-defendants in the Circuit Court for Baltimore City and were convicted of various offenses. 2025 WL 2027549 at *1. The three co-defendants raised several issues on appeal before this Court. *Id.* We reversed Mr. Dunbar's and Mr. Thornton's convictions "based on the erroneous admission of expert firearms identification testimony" and remanded for further proceedings, and we affirmed Mr. Jerry's convictions. *Id.* The State filed a petition for writ of certiorari, which was granted. *See* 2026 WL 1846743 at *1.

Supreme Court decided *Abruquah II* on June 20, 2023. 483 Md. 637. On October 10, 2023, the circuit court held a hearing on the motion for new trial, during which Thornton raised *Abruquah II* for the first time. 2026 WL 1846743 at *5.

In the instant case, Mr. Boler was indicted on August 26, 2019. His first trial, which resulted in a partial verdict was held in October and November of 2021. His second trial began on April 17, 2023, with a verdict on April 21, 2023. On April 24, 2023, he filed a Motion for New Trial, in which he raised the following issues:

a) That the Defendant was denied a speedy trial.
b) That the denial of his request to suppress his statement was error.
c) That the introduction of all evidence from Mr. Whitehead, after a prior jury trial verdict of not guilty on conspiracy with Mr. Whitehead was error.
d) That denial of his motions to dismiss for lack of evidence of his participation in the murder was error.
e) That evidence of the handgun stolen in Michigan was prejudicial and error.

On May 15, 2023, he filed his Supplement to Motion for New Trial, raising the following issues:

a) That the Defendant was denied a speedy trial.
b) That the denial of his request to suppress his statement was error.
c) That the introduction of all evidence relating to Mr. Whitehead, after a prior jury trial verdict of not guilty on conspiracy with Mr. Whitehead was error.
d) That evidence of the handgun stolen in Michigan was prejudicial and error.
e) That the denial of his motions to dismiss for lack of evidence of his participation in the murder was error, *as shown below;*
1) That evidence pointed to various other threats to his life as shown by victim's actions and fears.
2) That evidence showed his prior use of Patapsco Park for video and social media posting of threats.
3) That no evidence of where, when, and by whom murder was effectuated;

4) *That no shell casing found near body;*
5) *That no fingerprints or like evidence found to connect defendant;*
6) *That there was no evidence of his lost phone near the area after a search.*
7) *That there was no evidence of police follow up on defendants' employment from his statement;*
8) *That there was no evidence of Defendant connection to Victim at estimated time of disappearance.*

(Italics indicate newly raised issues).

On June 22, 2023, two days after the Supreme Court's decision in *Abruquah II*, he filed his Second Supplement to Motion for New Trial, raising this additional issue:

> That the Supreme Court of Maryland "Kobina Ebo Abruquah v. State of Maryland" on June 21, 2023, ruled that the lack of scientific methodology precludes an expert determination that a bullet can be reliably linked to a specific weapon and therefore, in this case, testimony by the firearm expert was inadmissible and reversible error[.]

We must consider which section of Maryland Rule 4-331 governs Mr. Boler's motion(s) for new trial. That rule states in relevant part:

> **(a) Within Ten Days of Verdict.** On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.
>
> **(b) Revisory Power.** The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:
>
> (1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;
>
> (2) in the circuit courts, on motion filed within 90 days after its imposition of sentence. Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.
>
> **(c) Newly Discovered Evidence.** The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

> (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief; and
>
> (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, § 8-201 or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.
>
> * * *
>
> **(e) Form of Motion.** A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.
>
> * * *

In the present case, Mr. Boler filed three different motions for new trial. The first was filed three days after the verdict; the second (i.e., the first supplement) was filed twenty-four days after the verdict and fleshed out the arguments raised in the initial motion; and the third (i.e., the second supplement) was filed sixty-two days after the verdict and raised, for the first time, the *Abruquah II* claim. Only the third motion/second supplement is at issue in this appeal.

In *Campbell v. State*, 373 Md. 637 (2003), the Supreme Court of Maryland considered whether an untimely amendment to a timely-filed motion for new trial, raising new issues not contained in the original motion, was permissible. *Id.* at 648. In the specific context of Rule 4-331(a), which the Court characterized as permitting "a motion for a new trial based on virtually any ground whatsoever," the Court concluded that an untimely amendment raising new issues was not allowed. *Campbell*, 373 Md. at 661. Applying *Campbell*, we conclude that the second supplement to the motion for new trial, filed sixty-two days after the verdict, was not cognizable under Rule 4-331(a).

We turn next to consider whether the second supplemental motion was cognizable under either Rule 4-331(b) or (c). Rule 4-331(b) permits a court to "set aside an unjust or improper verdict and grant a new trial" if the motion is filed within 90 days after sentencing or, thereafter, on the grounds of "fraud, mistake, or irregularity," while Rule 4-331(c) permits a court to "grant a new trial" if the defendant asserts "newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a)[.]"

There is very little case law addressing motions for new trial under Rule 4-331(b). Two of the most pertinent decisions are *Minger v. State*, 157 Md. App. 157 (2004), and *Ramirez v. State*, 178 Md. App. 257 (2008), *cert. denied*, 410 Md. 561 (2009), which we now consider briefly.

In *Minger*, we examined the meaning of "fraud, mistake, or irregularity" in the context of Rule 4-331(b) and concluded that they have the same meaning as in its civil counterpart, Rule 2-535(b), which is to say, those terms are narrowly construed, *Minger*, 157 Md. App. at 170–75, and would afford Mr. Boler no grounds for relief. In any event, none of those grounds were alleged below or considered by the circuit court, nor for that matter have they been raised in the briefs, and they are therefore not before us on appeal.[10] Md. Rules 8-131(a), 8-504(a)(6).

In *Ramirez*, we addressed a circuit court's authority to "set aside an unjust or improper verdict and grant a new trial" under Rule 4-331(b). Citing *Isley v. State*, 129 Md. App. 611, 626 (2000), *disapproved on other grounds by Merritt v. State*, 367 Md. 17 (2001), we traced the origin of that part of Rule 4-331(b) to former Rule 759 b. *Ramirez*, 178 Md. App. at 280. Former Rule 759 b provided for a "Motion in Arrest of Judgment," which we deemed "an archaic term of art" that applied only to errors that are apparent "on the face of the record" and "not with the evidence or the trial proceedings[.]" *Isley*, 129 Md. App. at 626–27. *See Ramirez*, 178 Md. App. at 280. Plainly, the *Abruquah II* claim Mr. Boler sought to raise under the guise of a motion for new trial falls under the latter category and is not cognizable under the trial court's authority to "set aside an unjust or improper verdict."

Finally, we consider whether Mr. Boler's *Abruquah II* claim could have qualified as a claim based on newly discovered evidence under Rule 4-331(c). In *Ward v. State*, 221 Md. App. 146 (2015), we addressed a related question—whether "'newly discovered evidence' can include 'new testing methods or techniques that did not exist at the time of

[10] The Court in *Minger* further held that an erroneous jury instruction was not a "mistake" or "irregularity" within the ambit of Rule 4-331(b). *Minger*, 157 Md. App. at 172-75. Likewise, an error in admitting evidence, as alleged here, is neither a "mistake" nor an "irregularity."

trial, but are used to test evidence introduced at the original trial.'"[11] *Id.* at 163 (quoting *Wyatt v. State*, 71 So. 3d 86, 100 (Fla. 2011)). We held that such new testing methods fell within the meaning of newly discovered evidence, *id.*, and we therefore vacated a circuit court's decision which had reached a contrary conclusion. *Id.* at 155, 170.

On the other hand, in *Hawes v. State*, 216 Md. App. 105 (2014), we declared that "evidence," in the context of an actual innocence petition (and therefore also in the closely related context of Rule 4-331(c)), means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Id.* at 134. A judicial decision, such as *Abruquah II*, is not "evidence" under that definition.

But even were we to give Mr. Boler the benefit of the doubt and treat his second supplemental motion as a motion for new trial on the ground of newly discovered evidence, there is still a fundamental problem he cannot overcome.[12] To obtain relief on a motion

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[11] At issue in *Ward* was whether a murder conviction based in part on expert testimony about comparative bullet lead analysis, a subsequently repudiated forensic technique, should be vacated. *Ward*, 221 Md. App. at 148–49.

[12] We further note that Rule 4-331(e) provides that a motion, "if filed under section (c) of this Rule, [shall] describe the newly discovered evidence[.]" The second supplemental motion in this case stated in its entirety as to this claim:

> 3. That the Supreme Court of Maryland "Kobina Ebo Abruquah v. State of Maryland" on June 21, 2023, ruled that the lack of scientific methodology precludes an expert determination that a bullet can be reliably linked to a specific weapon and therefore, in this case, testimony by the firearm expert was inadmissible and reversible error[.]

It is quite a stretch to say that this motion described any newly discovered evidence.

pursuant to Rule 4-331(c), a defendant must show that the claimed newly discovered evidence could not have been discovered previously by the exercise of due diligence. *Hunt v. State*, 474 Md. 89, 108 (2021) (explaining that due diligence "'contemplates that the defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her'") (quoting *Argyrou v. State*, 349 Md. 587, 605 (1998)). As the State points out in its brief, much of the body of work challenging the unqualified assertions of toolmark experts had already existed years before Mr. Boler's trial. *See Abruquah II*, 483 Md. at 662–66 (setting forth the history of expert reports challenging the methodology of the AFTE beginning in 2008).[13] But in any event, Mr. Boler's counsel was on constructive notice of an *Abruquah II* issue no later than June 3, 2022, the date the Supreme Court of Maryland issued a writ of certiorari to consider the very issue now raised in this appeal.[14] *Abruquah*, 479 Md. 63 (granting certiorari). Because

[13] AFTE stands for the "Association of Firearm and Tool Mark Examiners." *Abruquah II*, 483 Md. at 659 n.8.

[14] Mr. Boler's reliance on *Merritt* is misplaced. In that case, the Supreme Court of Maryland held that, although generally a trial court has broad discretion in ruling on a motion for new trial, under narrow circumstances, that discretion is narrow, and an appellate court will review for harmless error rather than abuse of discretion a trial court's denial of a motion for new trial. *Id.* at 29–30. Specifically, the Court declared, "when an alleged error is committed during the trial, when the losing party or that party's counsel, without fault, does not discover the alleged error during the trial, and when the issue is then raised by a motion for a new trial," an appellate court reviews "the denial of the new trial motion under a standard of whether the denial was erroneous." *Id.* at 31.

In *Merritt*, an exhibit (which included a search warrant for Merritt's home) that had been marked for identification but not admitted into evidence was "mistakenly sent to the jury room during deliberations." *Id.* at 19. That mistake was discovered two days after the verdict, and although the Court's decision does not expressly so state, it appears that (continued)

Mr. Boler cannot show that the purported newly discovered evidence in his case could not have been discovered previously by the exercise of due diligence, there was neither error nor abuse of discretion by the trial court in denying his motion for new trial.[15]

Merritt's motion for new trial invoked Maryland Rule 4-331(a), which permits motions on the broadest possible grounds.

In this case, unlike in *Merritt*, the defense cannot be deemed to be without fault in failing to discover the alleged error until after the trial had concluded, for substantially the same reasons it failed to show due diligence. Defense counsel should have been aware of a potential *Abruquah II* issue nearly ten months prior to the start of the retrial. (An alternative rationale, leading to the same conclusion, is that "error" in the context of *Merritt* does not apply in this case because it was not until *Abruquah II* was decided that it was established, under Maryland law, that admitting an expert's unqualified conclusion that bullet fragments had been fired from a particular firearm *was* error. Under this theory, there was no error at the time Mr. Birchfield testified.)

[15] We further note that our holding is consistent with Maryland law addressing the prospective-vs.-retroactive application of appellate decisions that change the common law. A decision of the Supreme Court of Maryland that changes the common law of Maryland applies to the case then decided "and any other cases that are pending on direct appeal when [the] opinion is filed, where the relevant question has been preserved for appellate review." *Kazadi v. State*, 467 Md. 1, 47 (2020). The parties agree that *Abruquah II*, which was filed June 20, 2023, changed the law of Maryland regarding the admissibility of expert testimony by toolmark examiners. However, the parties' position somewhat misstates the scope of *Abruquah II*. As the *Thornton* Court noted, *Abruquah II* held, "that the methodology of the Association of Firearm and Toolmark Examiners ('AFTE') could support an opinion that ammunition evidence was 'consistent with' having been fired from a particular firearm but could not support an unqualified opinion that the ammunitions fired from that specific firearm." 2026 WL 1846743 at *1. In this case, trial counsel did not object to Mr. Birchfield's testimony, and the issue was therefore not preserved. Thus, Mr. Boler was not entitled as of right to retrospective application of *Abruquah II* to his case.

Abruquah II says nothing about its prospective-vs.-retroactive application. In *Thornton*, our Supreme Court has made it clear that *Abruquah II* should be read narrowly. 2026 WL 1846743 at *8. A toolmark expert may testify that bullet fragments and test firings are consistent with a conclusion that the bullet fragments were fired from a particular firearm, but may not testify unequivocally that the bullet fragments were fired from that weapon unless the trial court finds, following a *Daubert-Rochkind* hearing, that the State has offered sufficient evidence for its expert to so testify. And of course, the trial

(continued)

Both *Abruquah I* and *Abruquah II* arose out of challenges to the testimony of a ballistics expert. In *Thornton,* our Supreme Court clarified that *Abruquah II* did not resolve the question of an unqualified firearms identification with categorical clarity. 2026 WL 1846743 at *8. Instead, *Abruquah II* was a "case-specific *Daubert* determination based on a peculiar evidentiary record." *Id.* In this respect it is important to note that the Supreme Court originally considered *Abruquah I* as a review of a *Frye/Reed* determination. 471 Md. at 250.

We offer the following additional observation. Where "alleged errors were not preserved for appellate review by timely objection at trial, raising them in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement." *Isley*, 129 Md. App. at 619 (citing *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 61 (1992)), *disapproved on other grounds by Merritt,* 367 Md. at 24. In *Buck*, the Court observed that "the failure of the moving party to object to an alleged error or impropriety at trial is a significant factor to be considered by the trial judge when that error is later argued in support of a motion for new trial" and that such a motion "should not be an opportunity to 'sandbag' an opponent, nor ordinarily to correct oversights that might have been remedied at trial if seasonably noted." 328 Md. at 62. In *Thornton,* our Supreme Court pointed out that a timely motion for new trial does not relieve a defendant of the obligation to preserve objections at trial. 2026 WL 1846743 at *12. Having cited

court risks reversal if it takes the latter course and an appellate court concludes that it abused its discretion.

Buck, our Supreme Court noted that inclusion of an issue that had not been raised at trial would allow a defendant "to preserve any conceivable objection by raising it for the first time after the jury's verdict." *Id.*

Thus, the trial court here properly could weigh the failure to preserve the claim by making a contemporaneous objection against the degree of prejudice Mr. Boler may have suffered. In other words, the trial court, in exercising its discretion whether to grant a new trial, could weigh prejudice through the lens of plain error, which provides the measure of prejudice for an unpreserved claim of error. *Savoy v. State*, 420 Md. 232, 240–44 (2011). Before an appellate court grants relief under plain error, the following conditions must be satisfied:

> • First, there must be an error or defect that has not been intentionally relinquished or abandoned.
> • Second, the legal error must be clear or obvious, rather than subject to reasonable dispute.
> • Third, the error must have affected the appellant's substantial rights, which ordinarily means that the appellant must demonstrate that the error affected the outcome of the proceedings.
> • Fourth, the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings.

2026 WL 1846743 at *6 (citing *Beckwitt v. State*, 477 Md. 398, 464 (2022)).

If those four conditions are satisfied, then an appellate court may exercise its discretion to grant relief if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Newton v. State*, 455 Md. 341, 364 (2017).

In this case, Mr. Boler cannot show that the purported *Abruquah II* error (which, at the time of his retrial, was not considered to be error[16]) affected his substantial rights. Although it is true that Mr. Birchfield's testimony furnished a critical direct link between the gun and the shooting, we must bear in mind what Mr. Birchfield would have been allowed to say if the trial court had been clairvoyant and applied *Abruquah II* retroactively at the time of trial. Mr. Birchfield's testimony would not have been excluded in its entirety; rather, he would have been allowed to testify that comparison of the test firings with the bullets recovered from the victim (QBF1, QB3, and QB4) was "consistent with" the conclusion that the bullets recovered from the victim had been fired from the purported murder weapon. *Abruquah II,* 483 Md. at 694. Thus, Mr. Birchfield's testimony and conclusions still would have had evidentiary value; they just would not have been presented without qualification (as they were in fact presented to the jury in this case).

In addition, defense counsel did not voir dire Mr. Birchfield on his qualifications, nor did he cross examine him. There may be any number of reasons for this tactical decision. Perhaps, that Mr. Birchfield would be able to testify that the bullets recovered from the victim were consistent with bullets fired from the gun. Or perhaps, because of the unusual composition of the red-tipped bullets. In any event, there was no objection to the testimony.

[16] At the time of Mr. Boler's retrial, testimony such as Mr. Birchfield's was routinely admitted in Maryland criminal trials and thus, at that time, its admission into evidence was not regarded as error. Generally, for an error to be plain, it must have been "'plain' at the time of trial[.]" *James v. State*, 191 Md. App. 233, 247 (2010).

In *Thornton*, our Supreme Court held that a party who wishes to challenge the admissibility of expert testimony on reliability grounds must raise that challenge through a motion filed pursuant to Maryland Rule 4-252. 2026 WL 1846743 at *11. The Court in *Thornton* noted that the challenge to the ballistics expert's opinion in *Abruquah II* had been raised in a pretrial motion. *Id.* The Court declined to decide the outer boundaries of plain error review for unpreserved *Daubert* claims. *Id.* The Court noted that in Thornton's trial, there had been "no challenge whatsoever to the firearms identification methodology." *Id.* Therefore, there was nothing in the record that would permit an appellate court to conduct a *Daubert* analysis. *Id*.

Similarly, in this case, Mr. Boler challenged neither the qualifications nor findings of the ballistic expert. Mr. Boler's original Motion for New Trial and first Supplement to Motion for New Trial did not address the findings of the State's ballistics expert. The issue was raised for the first time in the Second Supplement to Motion for New Trial after the decision in *Abruquah II* had been issued. Accordingly, there is nothing in the record from which we can conclude that the circuit court erred in denying the Motion for New Trial.

The distinctive red-tipped cartridges also factor in our prejudice analysis. The lead detective in this case testified that she had never seen those cartridges in any other case during her entire eighteen-year career. And yet, not only were they recovered from the purported murder weapon, but also, identical cartridges were depicted in photographs recovered from the suspects' cell phones during a text conversation in which the co-defendant, Mr. Whitehead, sought to purchase from Mr. Boler a handgun that appeared identical to the weapon recovered from the stream a few days after the murder.

Furthermore, cell phone location data showed that Mr. Boler and Mr. Whitehead had been present at the murder scene on the day the victim disappeared (and presumably was murdered) as well as the following day. Finally, in Mr. Boler's recorded statement to the lead detective, he made an inculpatory admission, exclaiming, "like, at the end of the day, my life is over with[,]" and, "I don't, I don't care. I just know my life is through." Although not an express admission of guilt, that remark is hardly consistent with innocence.

Under the facts of this case, even were we to assume that there was *Abruquah II* error, it would not rise to the level of plain error because Mr. Boler has failed to establish that any purported error affected his substantial rights. It is not even clear that reversal would be required under harmless error review, but because Mr. Boler failed to make a contemporaneous objection to Mr. Birchfield's testimony, we need not decide that question.

II.

Parties' Contentions

Mr. Boler contends that the trial court erred in denying his motion to dismiss on speedy trial grounds. He claims that the seventeen-month delay between his first trial and his retrial was "unreasonable" and denied him his constitutional right to a speedy trial.

Mr. Boler begins with the observation that the total length of delay from the time a mistrial was declared in the first trial, on November 9, 2021, until his retrial commenced, on April 17, 2023, was enough to trigger a constitutional analysis. He then points out that none of the delay was attributable to him. In doing so, he downplays the severity of the backlog crisis that enveloped Maryland trial courts at the time his retrial was pending. He further contends that the additional six-month delay, caused by a postponement granted because one of the prosecutors had come down with COVID just before the first scheduled retrial date in October 2022, was "unreasonable."

Mr. Boler further points out that he filed repeated motions to dismiss on the ground of a speedy trial violation, thereby establishing his assertion of the right. And finally, Mr. Boler contends that he was prejudiced by the delay in four ways: first, because he "endured oppressive pretrial incarceration while waiting for his retrial[;]" second, because his mother became homeless while he was incarcerated prior to trial, and he was unable to assist her in finding a place to live; third, because the "rollercoaster of anticipation and delay" he endured caused him "anxiety to a level he never previously experienced," "negatively affect[ing] his mental health[;]" and fourth, because the excessive pretrial delay hampered his defense by rendering the witnesses "generally less reliable" because of loss of memory, and because pretrial incarceration interfered with his ability to assist his counsel in his defense.

The State acknowledges that the seventeen-month-eight-day delay between the declaration of mistrial and the start of the retrial was of constitutional dimension but contends that Mr. Boler was not entitled to dismissal of the remaining charges. According to the State, the reasons for the delays in bringing him to (re)trial either should be deemed neutral (the initial eleven-month delay attributable to the COVID-induced backlog in the circuit court) or should weigh only very slightly against the State (the six-month additional delay caused by the prosecutor's illness).

The State recognizes that Mr. Boler "diligently pursued his right to a speedy trial, which supports his motion" but that, "[s]tanding alone," Mr. Boler's assertion of the right "cannot heavily weigh in favor of dismissal when the delay was caused by the courts' response to a catastrophic global pandemic that affected *every criminal defendant* within the judicial system at that time." And finally, the State contends that Mr. Boler failed to establish "any genuine prejudice" and that, consequently, the circuit court correctly denied his motion to dismiss.

Additional Facts Pertaining to the Claim

The first trial concluded, on November 9, 2021, with a partial verdict, and a mistrial was declared on the two counts on which the jury was unable to reach a verdict—murder in the second degree and use of a firearm in the commission of a crime of violence. The retrial was initially scheduled to begin on October 18, 2022.

One day before that date, on October 17, 2022, the State requested, and the circuit court granted, a postponement because one of the prosecutors was exhibiting COVID symptoms. The court rescheduled the retrial to begin six months later, on April 17, 2023.

Hovering in the background was the COVID pandemic. During parts of the pendency of Mr. Boler's retrial, from December 29, 2021, until March 7, 2022, jury trials were suspended in Maryland, as they had been several times previously since March 2020.[17] Similar suspensions of jury trials had been imposed from March 16, 2020, until October 6, 2020; and from November 16, 2020, until April 24, 2021. Moreover, during the

[17] *Administrative Order*, at 2 ¶ (b).

times when jury trials were held, there were social distancing measures that required the proceedings to be spread out, which further increased the delays for everyone whose jury trials were pending, because the throughput of the system was diminished.

Mr. Boler filed four pro se motions to dismiss on the ground of a speedy trial violation.[18] The State filed two answers to the motions to dismiss. In both answers, the State pointed out that Mr. Boler had consented to rescheduling his initial trial date beyond the *Hicks* 180-day date and that, therefore, the only issue before the court was whether there had been a constitutional violation. The State further asserted that the delay was not presumptively prejudicial given the complexity of the case but that, in any event, the delay was caused primarily by the suspension of jury trials that had been necessitated by the COVID pandemic, which should be deemed a neutral reason, and, therefore, there was no constitutional violation.

On the morning of the first day of (re)trial, the court heard argument on the motion to dismiss. The trial court then recited the procedural history of the case and the reasons for the various delays, many of which were necessitated by the COVID pandemic,[19] and it denied the motion, declaring that it "heard no indication that the delay itself has complicated or prejudiced Mr. Boler's ability to defend himself at this particular trial."

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[18] In his brief, Mr. Boler cites six additional motions to dismiss, but those motions alleged that he had not been provided a copy of his indictment and that there had been a lack of prosecution, and requested dismissal without prejudice.

[19] The circuit court pointed out that Mr. Boler had "expressly waived" *Hicks* prior to the first trial and further correctly observed that the *Hicks* rule does not apply to a retrial. *Icgoren v. State*, 103 Md. App. 407, 415–16, *cert. denied*, 339 Md. 167 (1995).

Analysis

The Four-Factor Balancing Test

In reviewing a trial court's denial of a motion to dismiss on speedy trial grounds, we accept the trial court's factual findings unless they are clearly erroneous, but we perform our own independent analysis to determine whether there was a constitutional violation. *Glover v. State*, 368 Md. 211, 220–21 (2002). We apply the four-factor balancing test articulated in *Barker v. Wingo*, 407 U.S. 514 (1972). Those factors are: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.* at 530.

The first factor, length of delay, performs double duty; it is a "triggering mechanism" insofar as there must be "some delay which is presumptively prejudicial," and it also is weighed in the balancing analysis. *Id.* "Closely related to length of delay is the reason the [prosecution] assigns to justify the delay." *Id.* at 531. "[D]ifferent weights should be assigned to different reasons." *Id.* "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the" prosecution. *Id.* Less blameworthy reasons "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 [prosecution] rather than with the defendant." *Id.* But a "valid reason, such as a missing witness, should serve to justify appropriate delay." *Id.*

"The 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. Conversely, the "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532.

Prejudice "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Id.* "[T]hree such interests" identified by the Court are "(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.* The last is "the most serious" concern "because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.*

<u>*Balancing the Factors in This Case*</u>

"In a case, as here, in which there was a retrial following the declaration of a mistrial, the starting point for computing the length of delay begins at the time when the mistrial was declared, and the relevant time period runs until the commencement of the retrial." *Hallowell v. State*, 235 Md. App. 484, 513–14 (2018) (citation omitted). The parties agree, as do we, that the length of the delay, approximately seventeen months, is sufficiently long as to trigger a constitutional analysis. *See id.* at 514 (citing cases holding that a delay lasting one year generally triggers a speedy trial analysis). "[O]f the four factors we weigh in determining whether" there was a speedy trial violation, however, the "'length of delay, in and of itself, is not a weighty factor.'" *State v. Kanneh*, 403 Md. 678, 689 (2008) (quoting *Glover*, 368 Md. at 225).

To analyze the reasons for the delay, we first parse the time axis into intervals, corresponding to the events that caused the postponements:

November 9, 2021: Mistrial declared.

December 29, 2021: Jury trials suspended because of COVID-19 emergency.

March 7, 2022: Suspension of jury trials lifted.

October 18, 2022: Retrial originally scheduled following declaration of mistrial.

October 17, 2022: Retrial postponed because prosecutor had COVID.

April 17, 2023: Retrial begins.

These delays are substantially neutral in their weighting, but to the extent they weigh against the State, their weight is only slight. In particular, the eleven-month period from November 9, 2021, until the first rescheduled trial date, October 18, 2022, and which includes a two-month, one-week period when no jury trials could be held because of COVID lockdowns, "is accorded essentially no weight in the analysis, as that is the time it would have taken for trial preparation in the absence of any of the ensuing postponements." *Hallowell*, 235 Md. App. at 515.[20] The six-month period from October 17, 2022, until April

[20] This is true even though much of the parties' pretrial preparation had already been completed prior to the first trial. For example, in *Hallowell*, which also involved a retrial following the declaration of a mistrial, we weighted the six-month delay between the declaration of a mistrial until the first rescheduled trial date as neutral because it was "necessary for the orderly administration of justice." *Hallowell*, 235 Md. App. at 515 (citation and quotation omitted). That was particularly true here because the repeated suspensions of jury trial from 2020 until 2022, *Final Administrative Order*, supra, at 2 ¶ (b) (stating that jury trials were suspended from March 16, 2020, through October 5, 2020; from November 16, 2020, through April 23, 2021; and from December 29, 2021, through March 6, 2022), attributable to the COVID pandemic, created a backlog of cases, many of which were older than Mr. Boler's. Simply put, through no fault of anyone, Mr. Boler was forced to wait his place in line longer than would have occurred in the absence of the pandemic.

17, 2023, although attributable to the State, weighs only slightly. That postponement was necessitated by the prosecutor's illness. In a relatively complex murder trial, it is reasonable for the State to wish at all costs to avoid substituting a different prosecutor, who initially would have been unfamiliar with the case (and who, by virtue of that substitution, would have been unavailable to try other cases to which she had been assigned, perhaps causing other cases to be postponed).

The parties agree, as do we, that Mr. Boler asserted his speedy trial right promptly and repeatedly and that this factor weighs in his favor.[21] (Mr. Boler filed four separate motions to dismiss for speedy trial violation and raised the matter by motion at the start of his retrial.)

The prejudice Mr. Boler claims, primarily oppressive pretrial incarceration and concomitantly his inability to assist his mother while she was evicted from her home,[22] is entitled to only slight weight. Beyond a vague and unsubstantiated assertion that "the witnesses were generally less reliable due to the natural difficulty to accurately recall information from years prior," Mr. Boler does not claim that any evidence relevant to his defense was degraded or became unavailable, factors entitled to greater weight in the analysis.

[21] Although *Barker* casts this factor as "entitled to strong evidentiary weight," *Barker*, 407 U.S. at 531, it is hard to avoid the conclusion that it is primarily the converse, "that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial," *id.* at 532, that enjoys the strong presumption.

[22] We give no weight to Mr. Boler's assertion that the "rollercoaster of anticipation and delay" he endured "was agonizing and prejudicial."

After balancing all the factors, we hold that the circuit court did not err in denying Mr. Boler's speedy trial claim.

III.

Parties' Contentions

Mr. Boler contends that the trial court "erred by excluding testimony about the victim's potential gang involvement." According to Mr. Boler, that testimony "was relevant because it would have suggested alternate suspects and a motive unrelated to [Mr.] Boler." Mr. Boler further contends that the excluded testimony, concerning a tattoo on the victim's arm, had probative value that outweighed its potential for unfair prejudice, confusion of the issues, and waste of time. Thus, he asserts, the circuit court erred (or, in the alternative, abused its discretion) in excluding the testimony.

The State counters that this claim is not preserved because defense counsel failed to proffer what the excluded evidence would have been, and he acquiesced in the trial court's rulings excluding any evidence that the victim belonged to a gang. On the merits, the State contends that there was no error.

Additional Facts Pertaining to the Claim

During the cross-examination of Martesha Copeland, the victim's mother, defense counsel asked whether her son had any gang affiliations:

> [DEFENSE COUNSEL]: Did he [i.e., the victim] say -- to you at that time, where I'm going, I don't want anyone to know your car or license plate?
>
> MS. COPELAND: Um, he was concerned for my safety if other people knew my car.

[DEFENSE COUNSEL]: Did he tell you why he was concerned about your safety for that reason?

MS. COPELAND: He said, because people around here don't play.

[DEFENSE COUNSEL]: Don't like him?

MS. COPELAND: Don't play.

[DEFENSE COUNSEL]: Oh. Don't play? Ah-huh.

MS. COPELAND: Right.

[DEFENSE COUNSEL]: Okay. **Do you know whether he was a member of a gang?**

[PROSECUTOR 1]: **Objection.**

THE COURT: **Sustained.** (PAUSE)---

[DEFENSE COUNSEL]: **I think the Judge sustained it, so you can't answer that question. She was getting ready to answer, Your Honor.**

THE COURT: Oh.

[DEFENSE COUNSEL]: **All right.**

* * *

[DEFENSE COUNSEL]: Do you know if he had any tattoos?

MS. COPELAND: Yes.

[DEFENSE COUNSEL]: All right. Can you tell the ladies and gentlemen of the jury what tattoos he had?

MS. COPELAND: He had-- um, I believe he had two. He had angels on his arm and then, he had an MMDM, I think it was or something like that--

[DEFENSE COUNSEL]: M-- well, was it--

MS. COPELAND: -- on his-- I think it was like, lettering on his arm, too. It was MMDM, something like that or--

[DEFENSE COUNSEL]: And, and do you know what that was reflected of? You know, why he had that?

MS. COPELAND: One of Glen's goals was to be a millionaire--

[DEFENSE COUNSEL]: Ah-huh.

MS. COPELAND: -- and so, I didn't-- I never knew that he had tattoos and he just came home and he had it and so, that was a source (Laughs)--- of contention as well. But he later described that he wanted to get something to inspire him to strive.

[DEFENSE COUNSEL]: **But isn't that a gang affiliation?**

[PROSECUTOR 1]: **Objection.**

THE COURT: **Sustained.** You don't have to answer that.

[DEFENSE COUNSEL]: **Thank you.**

MS. COPELAND: Mm-hmm.

[DEFENSE COUNSEL]: Just one or two more questions concerning this. Ah, let's see. Did he have any social media postings that you know about?

MS. COPELAND: I didn't frequent his page,--

[DEFENSE COUNSEL]: No?

MS. COPELAND: -- but I, I do know that he was on social media. Mm-hmm.

[DEFENSE COUNSEL]: **Do you know-- if you do know, did you know that he had posted it one time that 90% of these n----rs want to kill me--**

[PROSECUTOR 1]: **Objection.**

[DEFENSE COUNSEL]: **-- and rob me?**

THE COURT: Objection? Is there an objection to that?

[PROSECUTOR 1]: Yes.

THE COURT: All right. **Sustained. I think her testimony was she was unfamiliar with his postings.**

[DEFENSE COUNSEL]: Okay. Were you concerned for his safety?

MS. COPELAND: I was.

[DEFENSE COUNSEL]: All right. Were you concerned at all as to what your children had advised you? Were you concerned at all about him having people at your house?

MS. COPELAND: You said, what-- can you repeat that again?

[DEFENSE COUNSEL]: Yeah. Were you concerned at all about him having people come into your house?

MS. COPELAND: I wasn't aware of anybody coming into my house.

[DEFENSE COUNSEL]: All right. Did you learn anything from your children-- without saying what it was, did you learn from your other children that he had been having people at your house?

MS. COPELAND: Um, after he, he passed away, they did tell me.

[DEFENSE COUNSEL]: Okay. So, you didn't know that ahead of time?

MS. COPELAND: No.

[DEFENSE COUNSEL]: Okay.

MS. COPELAND: Uhn-uhn.

[DEFENSE COUNSEL]: May I have just a minute, Your Honor?

THE COURT: Yes. (PAUSE)---

[DEFENSE COUNSEL]: Did you say-- did you tell the police when-- again, when they were doing this investigation, that he had a friend of his name Smoke drive him around?

MS. COPELAND: Yes.

[DEFENSE COUNSEL]: And who's Smoke?… You know his name?

MS. COPELAND: I wanna say it's Jonah (phonetic.). It's, it's in my phone, but I can't remember his, his first name right off, right off hand.

[DEFENSE COUNSEL]: And is he somebody that would drive him around because he couldn't drive?

MS. COPELAND: Yeah.

[DEFENSE COUNSEL]: And that's--

MS. COPELAND: Yes.

[DEFENSE COUNSEL]: -- the person-- I guess the primary person? That's the one you told the police about?

MS. COPELAND: Um, primary person for?

[DEFENSE COUNSEL]: To drive him around?

MS. COPELAND: That I knew of.

[DEFENSE COUNSEL]: That, that you knew of?

MS. COPELAND: Mm-hmm.

(Emphasis added.)

Then, during the cross-examination of Corporal Beshore, the following occurred:

[DEFENSE COUNSEL]: Did you find any tattoos on the body when you looked at it?

[CPL.] BESHORE: There were tattoos on the body. Yes.

[DEFENSE COUNSEL]: **And, and was there a tattoo for DMI?**

[PROSECUTOR 1]: **Objection.**

THE COURT: **Overruled.**

[CPL.] BESHORE: **There was, there was a tattoo that, from my limited knowledge, training and experience on gangs that could be possibly identified as a Dead Man's Incorporated tattoo, which is a— all-- a partial pyramid with an all-seeing eye. But again, that's from my limited experience on--**

[DEFENSE COUNSEL]: I understand. I'm just asking what you saw, too, with reference to that. And you all continued your investigation, you and the members that were-- you were supervising from your group there, with reference to that? And you went to his social media, is that correct?

[CPL.] BESHORE: That's correct.

[DEFENSE COUNSEL]: And ah, in your report, you laid out that he, in fact, had two social media, Facebook pages?

[CPL.] BESHORE: Yes. I believe so.

[DEFENSE COUNSEL]: And ah, one of them was called Money Making, according to the report? And the other one was Z-H-E-N-L-I and then, G-O-N, is that right? And you--

. . . There were two social media things that were taken off that you referred to in your report. **One of them was-- again, I'm looking at ah, any strippers or prostitutes that want to be rappers, hit me up.** I will write your bars for you and be hell of a loyal. That was one of them, is that correct?

[CPL.] BESHORE: **That's correct.**

[DEFENSE COUNSEL]: **And ah, then, we had another one that says, 90% of these n----rs (phonetic.) want to kill me or rob, but I still be out there. Should tell you something. Is that right, too?**

[CPL.] BESHORE: **That's correct.**

[DEFENSE COUNSEL]: And now, as a result of getting those two social media matters, you continued the investigation as I understand it? And an Officer Shifflett. He works for you, is that correct?

[CPL.] BESHORE: He works with the Department of Maryland Natural Resources Police. Yes.

[DEFENSE COUNSEL]: You over-- supervise him in other words?

[CPL.] BESHORE: No. I don't.

[DEFENSE COUNSEL]: No? Okay.

[CPL.] BESHORE: No.

[DEFENSE COUNSEL]: He just was one of the, the people that were there on the scene? Or did he come out later?

[CPL.] BESHORE: He works in the area, I believe, of Howard and Carroll County.

[DEFENSE COUNSEL]: I see. All right. And he said-- looking at these-- Mr. Copeland. He said he had seen them on a prior-- Mr. Copeland, the victim in this case, had seen them around Memorial Day weekend actually coming out of that same park?

[CPL.] BESHORE: Ah, it was one of the things that I reached out to Officer Shifflett and showed him the picture from Copeland's Facebook page?

[DEFENSE COUNSEL]: Mm-hmm.

[CPL.] BESHORE: -- and asked him if he recognized him at any point in time. And he made reference to a possibility of him being one of the individuals that was at a park on, I believe, Memorial Day weekend?

[DEFENSE COUNSEL]: All right. And approximately, you said there were seventeen vehicles that came out of there? And he believed that was some kind of social media shoot? Or something like that?

[CPL.] BESHORE: Well, um, that area is well-known for people to park and then, access the, the park as well. They park on the side of the road. And a lot of times, there's-- there are signs in the area that say no parking, so our officers, when they go through, they just generally people to, to leave the area. That they can't park there.

[DEFENSE COUNSEL]: All right. And he, he identified him from this Facebook?

[CPL.] BESHORE: He said he might have been one of the individuals that he came across that evening.

[DEFENSE COUNSEL]: Well, as you wrote it up, it said, Officer Shifflett says he may have come in contact with Copeland around Memorial Day weekend. Officer Shifflett said he told-- he, he said he told to six people in vehicles to leave the park area on Baltimore side of River Road and South Hilltop Road. Officer Shifflett said it was a mixed group of males and females there to tape a rap video, and one person he recognized as Copeland from his Facebook page reading from your report, is that right?

[CPL.] BESHORE: That's correct.

[DEFENSE COUNSEL]: And accurate? What I just read,--

[CPL.] BESHORE: Right.

(Emphasis added.)

Analysis

Relevant Law

Maryland Rule 5-103(a) provides in relevant part:

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and

* * *

(2) *Offer of Proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered. The court may direct the making of an offer in question and answer form.

Maryland Rule 5-403 permits a trial court to exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "'An appellate court reviews for abuse of discretion a trial court's determination as to whether evidence is inadmissible under Maryland Rule 5-403.'" *Harrod v. State*, 261 Md. App. 499, 517 (2024) (quoting *Ford v. State*, 462 Md. 3, 46 (2018)). "A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles." *Kusi v. State*, 438 Md. 362, 386 (2014) (citations and quotations omitted) (cleaned up). "A discretionary ruling will generally not be deemed an abuse of discretion unless it is well removed from any center mark imagined by the reviewing court or is beyond the fringe of what the reviewing court deems minimally acceptable." *Howard v. State*, 440 Md. 427, 446 (2014) (quoting *Jones v. State*, 403 Md. 267, 291 (2008) (cleaned up)).

Application of the Law to the Facts

Initially we assume, without deciding (and as Mr. Boler contends), that "the substance of the evidence . . . was apparent from the context within which the evidence was offered." Md. Rule 5-103(a)(2). *See Devincentz v. State,* 460 Md. 518, 534–39 (2018) (discussing preservation of a claim that a trial court has erred in excluding evidence and concluding that a proffer is not necessarily required under all circumstances to preserve the claim for appeal). We turn our focus on that part of the rule that predicates error on a showing of prejudice.

In the present case, each time defense counsel questioned Ms. Copeland about her son's possible gang membership, the prosecutor objected, the trial court sustained the objection, and defense counsel acquiesced without proffering the testimony he hoped to elicit. The trial court did, however, allow counsel some latitude in cross-examining Ms. Copeland about another associate, "Smoke," and about her concerns for his safety because of people he had associated with. The only other objection concerned a social media posting, in which the victim allegedly declared that "90% of these n----rs want to kill me and rob me," but the court sustained the prosecutor's objection to that question because Ms. Copeland had testified that she "didn't frequent his page."

Both parties neglect to mention, however, that the trial court overruled the prosecutor's objection to similar testimony during the defense cross-examination of Corporal Beshore. Among other things, Corporal Beshore acknowledged that "there was a tattoo" on the victim's body "that, from [his] limited knowledge, training and experience on gangs that could be possibly identified as a Dead Man's Incorporated tattoo[.]"

He further acknowledged that, during his investigation, he discovered social media posts by the victim. In one of those posts, the victim declared that "90% of these n----rs (phonetic.) want to kill me or rob, but I still be out there." In another post, the victim sought "any strippers or prostitutes that want to be rappers[.]"

Even were we to assume for the sake of argument that the trial court erred or abused its discretion in sustaining the prosecutor's objections during the mother's cross-examination, we would conclude that any error was harmless. *Shivers v. State*, 256 Md. App. 639, 653–55 (2023) (concluding that a trial court's exclusion of evidence was harmless where substantially similar evidence was admitted at other points in the trial). *See Green v. State*, 456 Md. 97, 165 (2017) (explaining that "an appellate court does not reverse a conviction based on a trial court's error or abuse of discretion where the appellate court is satisfied beyond a reasonable doubt that the trial court's error or abuse of discretion did not influence the verdict to the defendant's detriment") (citations and quotations omitted) (cleaned up).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.