Circuit Court for Baltimore City
Case No. 119113023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1906

September Term, 2019

DAYAWNIS MASON

v.

STATE OF MARYLAND

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Berger, J.

Filed: October 5, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on appeal from appellant Dayawnis Mason's conditional guilty plea entered on October 1, 2019 in the Circuit Court for Baltimore City. Mason had been indicted in two related cases: a negligent manslaughter by vehicle case and a witness intimidation case. On the trial date, the State sought a postponement of both cases, but the court denied the State's postponement request. The State immediately entered a nolle prosequi in the witness intimidation case; the State informed the trial court it intended to proceed in the negligent manslaughter case.[1] When the negligent manslaughter case was called to trial, the State entered a nolle prosequi in that case as well.

The State subsequently refiled the same charges and Mason was indicted in two new cases. Mason moved to dismiss all of the charges for violations of Maryland Rule 4-271 and his constitutional right to a speedy trial. The circuit court granted Mason's motion to dismiss the witness intimidation case but denied the motion to dismiss as it pertained to the manslaughter case. Mason subsequently entered a conditional guilty plea in the manslaughter case.

Mason presents two issues for our consideration on appeal:

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[1] "A nolle prosequi, or nol pros, is an action taken by the State to dismiss pending charges when it determines that it does not intend to prosecute the defendant under a particular indictment." *Huntley v. State*, 411 Md. 288, 291 n.4 (2009). "[T]he entry of a nolle prosequi is generally within the sole discretion of the prosecuting attorney, free from judicial control and not dependent upon the defendant's consent." *Id.* (quotation omitted). "[W]hile a nolle prosequi discharges the defendant on the charging document or count which was nolle prossed, and while it is a bar to any further prosecution under that charging document or count, a nolle prosequi is not an acquittal or pardon of the underlying offense and does not preclude a prosecution for the same offense under a different charging document or different count." *Id.* (quotation omitted).

> 1. Whether the circuit court erred by concluding that the State had not violated Maryland Rule 4-271, *i.e.*, the 180-day rule.
>
> 2. Whether the circuit court erred by determining that Mason's constitutional right to a speedy trial had not been violated.

For the reasons we shall explain, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

During the October 1, 2019 plea hearing in Case No. 119113023, the following statement of facts was accepted by the defense with no additions, modifications, or corrections:

> On August the 4th, 2019, which was a Saturday at about 11:05 a.m., in the 2600 block of Liberty Heights Avenue, which is a street that has three lanes, one parking, two lanes of travel on each side, there's a cement median that runs down the middle. And parts of that area are residential in nature. That -- and the speed limit there is 30 miles an hour.
>
> That Mr. Dayawnis Mason was operating a motor vehicle in that area. And at the same time, Ms. Zeta Marie Jones (phonetic) and her son, Zachary Jones (phonetic), were crossing Liberty Heights Avenue. And as they were crossing Liberty Heights Avenue, Mr. Mason was coming along. Detective McCarthy was able to calculate that Mr. Mason was traveling between 46 and 55 miles an hour.
>
> And as he -- as Mr. Mason got into the 2600 block of Liberty Heights Avenue, he struck Zeta Marie Jones with his vehicle, knocking her to the ground and killing her. Mr. Mason did not stop, continued on and, in fact, drove to his home. There were three women in the car with Mr. Mason, Tyshay Morris (phonetic), Nyree Calhoun (phonetic), and Paresha Scott (phonetic).
>
> Ms. Morris, in particular, was going to school with Mr. Mason at the time. And the day after this incident, came to the police station and told the police that Mr. Mason had been the

> one who was driving the vehicle and identified him and would identify him at trial as the driver of the vehicle that struck Ms. Jones and did not stop. Mr. Mason not only didn't stop, but did not return to the area, and so he completely left the scene.
>
> As I said, Ms. Jones was dead there and pronounced dead there at the scene.
>
> Ms. Calhoun and Ms. Scott would also identify Dayawnis Mason, the man standing to the left of counsel at trial table, as the person who was driving the car at the time that it struck Zeta Marie Jones.
>
> The medical examiner conducted an autopsy and found that Ms. Jones died as a result of injuries sustained in that collision. All of those events occurred in Baltimore City.

The underlying factual basis for the witness intimidation case was summarized by the prosecutor during the hearing before the circuit court on Mason's motion to dismiss. We briefly summarize it here for context only. According to the prosecutor, after Mason struck and killed Jones, he left the scene and drove to his home. The prosecutor explained that Mason went into the house with Ms. Morris and allegedly "threatened her with a gun to basically keep quiet. And so that's the witness intimidation." After charges were filed, Morris was arrested on August 8, 2018. He was indicted on September 4, 2018, and on September 20, 2018, trial counsel entered his appearance for Morris and demanded a speedy trial.

On January 22, 2019, the circuit court granted the State's request for a postponement over Mason's objection, and a new trial date was set for March 13, 2019. The prosecutor had explained that he was requesting a postponement because discovery had not been provided and the assigned prosecutor was out of the country. On March 13, 2019, when

the case was before the reception court, the State again requested a postponement in both cases. The prosecutor informed the court that he had been unable to reach three of the State's witnesses: Ms. Morris, who was in the car with Mason at the time of the incident, as well as two other women, all of whom were related. The witnesses had recently moved and were not responding to the prosecutor's attempts to reach them. Mason objected to the postponement request. The motions court observed that the "case has been in the [c]ourt for 220 days. It's actually on the priority list as well. I do commend the State for their attempts to reach the victims, but today is today. So the postponement is denied."

The State offered to place the witness intimidation case on the "stet" docket, which Mason declined. The State then entered a nolle prosequi in the witness intimidation case but informed the court that it was ready for trial in the manslaughter case. The prosecutor explained that the State was "ready for trial" and "can go forward without the three [unavailable] witnesses." The case was assigned to a trial judge for trial. Approximately ninety minutes later, the case was called for trial. The prosecutor informed the court that it had a preliminary matter and then immediately entered a nolle prosequi in the negligent homicide case.

The State subsequently obtained a new warrant and Mason was re-indicted on the same charges. On August 21, 2019, Mason filed a motion to dismiss. Mason asserted that the State had violated Rule 4-271 as well as infringed upon his constitutional right to a speedy trial. A hearing was held on the motion to dismiss on September 11, 2019. At the hearing, the prosecutor gave the court "a little background" about what had occurred

between the denial of the State's motion to postpone and the entry of the nolle prosequi in the negligent homicide case on March 13, 2019.

The prosecutor explained that after his motion for a postponement was denied, he could not go forward in the witness intimidation case without one of the missing witnesses, but that he had another witness available in the vehicular manslaughter case: the victim's adult son. The victim's son was with her when she was struck and killed and had been cooperative with the prosecutor. The prosecutor explained that he had spoken with the son in the days leading up to trial and he would have testified about the collision and the fact that the car drove away. Mason had previously given a statement admitting that he was the driver, and it was the prosecutor's intent to use that statement "to make the full connection" as well as to introduce evidence from the accident reconstruction. The prosecutor explained that "[t]he case would have been better" with the three missing witnesses, but that he could "still go forward" without them, which is why he said the State was ready for trial after the motion to postpone was denied in reception court.

The prosecutor continued:

> So once we were in Part 45, I turned and unfortunately, that's when the Defendant's family and the victim's family who were in the courtroom began a loud and prolonged verbal argument with each other. And I said prolonged, in a courtroom, it seemed like it went on forever. [The trial judge] yelled for it to stop, but they didn't stop. The sheriffs tried to stop it, they didn't stop. Eventually more sheriffs came in and they were ushered out of the courtroom. What I didn't realize was that they had been thrown out of the courthouse. When we went to [trial], I attempted to reach the family and my witness. And I could not reach them. I don't know whether they had turned their phones off because they were in a

> courtroom and they had forgotten to turn them back on, but I couldn't reach them.
>
> So what I didn't know -- I didn't know that they had been thrown out of the courthouse. And I didn't know why they weren't there. I had no idea. And so once we arrived in [the trial court], because I could not reach the family and the son of the victim, who was the eyewitness to the actual collision, I entered a nolle pros. Because we were sent to [trial] and a jury panel was on its way. And there was just -- there was no -- if I would have known that the reason they weren't there was because they had been thrown out of the courthouse, then I would have asked [the trial judge] could I have a day, a day . . . You know, the next day . . . I didn't know whether [the family members] had left because they were mad, because I couldn't reach them. I had no idea. And so the entry of the nolle pros, it was because at that point I didn't have my witness. But I didn't realize why the witness wasn't there.

The trial judge inquired as to whether the prosecutor had requested that the case be sent back to reception court, and the prosecutor said that he did not because his calls to the family "were not answered" and he "still had time under *Hicks* to have tried the case, but I didn't know why my witness wasn't there."

The motions court granted Mason's motion to dismiss the witness intimidation case and denied the motion to dismiss the negligent manslaughter case.[2] The court reasoned that "having Ms. Morris on the stand would have been better for [the State's] case than not having her, but it wasn't critical to deciding this case." The court further observed that when the postponement request was denied, "it wasn't like [the witness intimidation case] where [the prosecutor] immediately entered a nol[] pros," but rather, the prosecutor's

[2] The trial court's grant of the motion to dismiss the witness intimidation case is not at issue in this appeal.

"response was, okay, give us a [c]ourt." The trial judge recognized that the relevant question for the court's determination was whether "the nol[] pros [was] really meant to circumvent the denial of the postponement that he had just had up in reception court, or was the nolle pros for other sort of un-*Hicks*-related reasons."

The motions court further articulated the issue before it as follows:

> [T]he question is, is this more like [*State v.*] *Huntley*[, 411 Md. 288 (2009),] where the State didn't need a postponement because it wasn't ready, it needed a postponement for other reasons, that wasn't granted. Or it needed the [c]ourt to rule on something that didn't happen. Or was it just to build a strong case. Which is, again, it's okay to dismiss charges if you have a weak case. And then [with] further investigation it becomes a strong case and you refile the charges, that's okay. Or was it essentially with the intent and effect of getting around the denial of the postponement request that had just been denied, where the basis of the request was not the same as the basis for the nolle pros.

The court reasoned that the basis of the postponement request before the reception court was the absence of Ms. Morris, but the basis of the subsequent nolle prosequi was "not because [the prosecutor] didn't have Ms. Morris, but because he didn't have the victim's son." The motions court found that the purpose of the nolle prosequi "wasn't to get around the denial of the earlier postponement" because "the earlier postponement request had been based on different grounds." Accordingly, the motions court concluded that "there was no violation of the 180 day rule" because "the purpose of the nol[] pros was not to bypass the [reception court j]udge's earl[ier] denial of the postponement," but, instead, "it was for independent reasons that arose after the denial of the postponement."

With respect to the constitutional speedy trial claim, the motions court found that the fourteen-month period between the date of arrest and the date of trial was sufficient to trigger a constitutional speedy trial analysis.[3] The court considered the factors set forth in *Barker v. Wingo*, 707 U.S. 514 (1972). The court found that the overall length of delay was "long" but "not egregious." The motions court considered that the reason for the delay was "primarily because [the victim's son] was thrown out of the courthouse" on the prior trial date. The motions court found that this was "not attributable to the State or only lightly so." The court considered, however, that there were "other things the State could have done other than enter a nol[] pros," so the court "count[ed] that delay against the State in that regard, that there were other alternatives to dismissing and refiling." The motions court emphasized that it was "not a decision that was undertaken in bad faith" and it was not "done with any intention of impairing Mr. Mason's defense or anything like that."

With respect to Mason's assertion of his right to a speedy trial, the motions court considered that there had been a prior postponement request by the State in March, which was granted over objection by the defense. The motions court found that Mason had "been consistent in asserting his right to a speedy trial," which "weighs in his favor." Finally, with respect to prejudice, the motions court observed that "the prejudice accruing to [Mason] in this case is the fact that he's been incarcerated." There was "no specific

[3] The motions court considered this time period "sort of in the light most favorable to the defense, that I would use that as the date and not the refiling date." The court observed that if it were to "use the refiling date, then we're not even there. We're not even talking about a constitutional issue at this point."

prejudice in the sense of . . . a witness [who had] died or moved out of the state or anything like that." The motions court found that there was prejudice, but it was "relatively slight." After weighing all of the *Barker v. Wingo* factors, the motions court concluded that there was no violation of Mason's constitutional right to a speedy trial.

On October 1, 2019, Mason entered a conditional plea of guilty to one count of criminal negligent manslaughter by vehicle and one count of leaving the scene of an accident where there was a death. This timely appeal followed.

DISCUSSION

I.

Mason's first argument on appeal is that the circuit court erred by denying his motion to dismiss because the State's entry of a nolle prosequi in the manslaughter case had the necessary effect of evading the 180-day rule.

Pursuant to Md. Code 2001, 2018 Repl. Vol.), § 6-103(a)(1)-(2) of the Criminal Procedure Article and Md. Rule 4-271,[4] a trial date may not be later than 180 days after the

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[4] Maryland Rule 4-271 provides:

> The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214(a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the

earlier of the appearance of counsel or the first appearance of the defendant before the circuit court. The term "*Hicks* date" or "*Hicks* deadline" is a reference to the case of *State v. Hicks*, 285 Md. 310 (1979), in which the Court of Appeals analyzed the predecessors to the current speedy trial statute and rule and held that dismissal of a case is the appropriate sanction when a criminal trial is not scheduled within 180 days of the earlier of the appearance of counsel or the defendant's first appearance before the circuit court, absent a good cause determination by the county administrative judge or his or her designee. The parties agree that the *Hicks* date in this case was March 19, 2019.

Generally, when a nolle prosequi is entered and a defendant is later recharged with the same offenses, the 180-day time period for bringing the defendant to trial begins to run anew under the second prosecution. *State v. Huntley*, 411 Md. 288, 293 (2009) ("Ordinarily, where criminal charges are nol prossed and identical charges are refiled, the 180-day time period for commencing trial . . . begins to run anew after the refiling."), citing *Curley v. State*, 299 Md. 449, 458 (1984). There are, however, two exceptions to the general rule:

> Where (1) the purpose of the State's nol pros, or (2) the necessary effect of its entry, is to circumvent the statute and rule governing time limits for trial, the 180–day period for trial begins with the triggering event under the initial prosecution, rather than beginning anew with the second prosecution.

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

Id. "The purpose and necessary effect exceptions will not apply where 'the prosecution [is] acting in "good faith" or so as to not "evade" or "circumvent" the requirements of the statute or rule setting a deadline for trial.'" *Id.* (quoting *Curley*, *supra*, 299 Md. at 459).

The issue in the case before us in this appeal is whether the necessary effect of the State's entry of a nol pros in the manslaughter case was to circumvent the 180-day requirement. In some cases, it is easy to determine whether a nol pros has the necessary effect of circumventing the 180-day rule. Indeed, as we explained in *Baker v. State*, 130 Md. App. 281, 290 (2000),

> *Curley v. State* gives us the quintessential example of when a nol pros will, indeed, have the necessary effect of circumventing the rule. In that case, the nol pros was entered on the 180th day available for trial under the indictment. Even as of that day, the State was not prepared for trial. No witnesses were present; the defendant was not present; defense counsel was not present. Had the nol pros not been entered, the prosecution would necessarily have been dismissed for a violation of the 180-day rule. That was the extreme situation that caused the Court of Appeals to conclude:
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>> In reality, the prosecution had already lost this case under § 591 and Rule 746 when the nol pros was filed. Regardless of the prosecuting attorney's motives, the necessary effect of the nol pros was an attempt to evade the dismissal resulting from the failure to try the case within 180 days.
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> 299 Md. at 462-63, 474 A.2d 502 (emphasis supplied).

Baker, *supra*, 130 Md. App. at 290. We emphasized that "[i]n the *Curley* case, if the nol pros on the 180th day had not been entered, the **only** alternative would inevitably have been a dismissal of the charges with prejudice for non-compliance with the 180-day rule.

There was no way that the trial could possibly have gone forward on that day." *Id.* at 292-93 (emphasis in original).

In this case, the determination of whether the necessary effect of the State's nol pros in the manslaughter case was to evade dismissal for non-compliance with the 180-day rule is far less obvious than that presented in the "quintessential example" of *Curley*. When considering the "necessary effect" of the entry of a nol pros, the "proper focus is on the consequences to the State if a nol pros was not entered." *Collins v. State*, 192 Md. App. 192, 210 (2010). We must "assess the situation as of the day the nol pros is entered" and avoid "looking backward from the arguably adverse effect, searching for a cause." *Baker*, *supra*, 130 Md. App. at 299.

Whether the entry of a nol pros has the "necessary effect" of circumventing the 180-day rule depends upon the unique factual circumstances of each case. The Court of Appeals issued its decision in *Curley*, *supra*, and in *State v. Glenn*, 299 Md. 464 (1984), on the same day, but reached different outcomes in each. In *Glenn*, the *Hicks* date was January 13, 1982 and trial was scheduled for November 17, 1981. *Id.*at 465. Prior to trial, the State discovered that the charging documents were defective because they failed to include one element of the charged offense. *Id.* Defense counsel failed to agree to an amendment of the charging documents, and, on the day of trial, the State entered a nol pros. *Id.* On the same day, the State refiled the charges. The Court of Appeals held that, "[u]nlike the situation in *Curley*, the necessary effect of the nol pros in [*Glenn*] was not to circumvent [the 180-day rule]." 299 Md. at 467. The Court reasoned that "[i]f the cases

had not been nol prossed, trial could have proceeded on November 17th. If the cases had not been nol prossed, and if for some reason trial had not proceeded when the cases were called on November 17th, there remained fifty-seven days before the expiration of the 180-day deadline." *Id.*

In *State v. Huntley*, 411 Md. 288, 292 (2009), a nol pros was entered on the day of trial which occurred one day prior to the expiration of the 180-day period. On the trial date, the State had moved to amend the indictment to change the date of the offenses based upon new information it had received from the victim's family. *Id.* The defendant objected to the amendment, and the trial court denied the State's motion. *Id.* Instead of proceeding to trial under the indictment containing purportedly incorrect dates, the State entered a nol pros. *Id.*

The Court of Appeals held that the nol pros in *Huntley* did not have the necessary effect of circumventing the 180-day rule. *Id.* at 302-03. The Court explained:

> When the State seeks to try a case beyond the 180-day deadline through the strategic use of a nol pros, its actions . . . are subject to the analysis discussed in *Curley*.
>
> Where the State instead is prepared to try the case on the trial date, pending approval of its motion to amend the flawed indictment, that motion is denied, and the State nol prosses the indictment in order to re-indict later on corrected charges, the significant concern of the statute, the rule, *Hicks*, and *Curley* regarding the "prompt disposition of charges" and the elimination of "excessive scheduling delays" is absent. In such a situation, the State has no obvious or secret motive to delay prosecution of the defendant beyond 180 days and there is no ruling by the trial court regarding its calendar that the State may be said to be circumventing.

Id. at 298–99 (citations omitted). The Court of Appeals concluded that the 180-day period for Huntley's trial "beg[an] anew with the second indictment" and vacated the judgment of the circuit court. *Id.* at 301, 302-03.

Our decision in *Baker*, *supra*, is also instructive. In *Baker*, we considered whether a nol pros had the necessary effect of circumventing the 180-day rule when it was entered nineteen days before the *Hicks* date. 130 Md. App. at 285. In *Baker*, the State had a "substantial need" to delay trial after concluding that "it would not be in the best interest of [a] nine-year-old boy who was the child abuse victim to testify." *Id.* at 296. The State intended to have a social worker testify as to hearsay statements made to her by the victim but was required by statute to give the defendant twenty days' notice of its intention to introduce the victim's statement through the social worker. *Id.* We reasoned that although the State did not request a postponement, "[i]t appear[ed] likely that a postponement would have been granted" had it been requested. *Id.*

Ultimately, we determined that the entry of the nol pros did not have the necessary effect of circumventing the 180-day rule. *Id.* at 302-03. We explained:

> On the day the nol pros was entered, February 23, the dismissal of all charges against the appellant for a violation of the 180-day rule was not the only alternative to the nol pros. On that day or on any of the nineteen days that followed, the State could still have proceeded to trial, using the nine-year-old victim as its chief prosecution witness, notwithstanding the fact that it might not have been in the child's best interest. Alternatively, the State could still have proceeded to trial on that day or on any of the nine days that followed, relying on the social worker as its chief prosecution witness and hoping that the trial judge would apply some sanction for the notice violation less severe than the exclusion of her testimony. Minor

> discovery violations do not routinely incur the heavy sanction of evidentiary exclusion. Yet again alternatively, the State could have waited until the tenth day after the nol pros (the twentieth day after giving notice of the witness) and on that day or on any of the nine days that followed, still proceeded with the trial with the social worker as its chief prosecution witness untainted by any notice violation. All of those alternatives failing, the State, at any time prior to March 14, could still have requested the administrative judge to grant a postponement to a time beyond the original 180-day barrier. The State was not without options.

Id. at 302-03.

With this legal framework in mind, we turn to the specific circumstances surrounding the entry of the nol pros at issue in this appeal. The circuit court judge denied the State's request for a postponement on March 13, 2019, after which the prosecutor entered a nol pros in the witness intimidation case but informed the reception court judge that it intended to proceed to trial in the manslaughter case. The case was assigned to a trial judge, but before the parties appeared before the court for trial, the victim's son -- one of the State's necessary witnesses -- was ejected from the courthouse after a heated argument with the defendant's family.

When the case was before the reception court, the State believed the victim's son was present and ready to testify. By the time the parties appeared before the court for trial approximately ninety minutes later, the victim's son was not present and was not answering his phone. At that time, the prosecutor did not know why the victim's son was unreachable and was not aware of the fact that the victim's son had been ejected from the courthouse. The prosecutor, therefore, entered a nol pros.

The nol pros was entered six days prior to the *Hicks* deadline. Based upon the record presented, however, despite the short time period between the entry of the nol pros and the *Hicks* deadline, the nol pros did not, in our view, have the necessary effect of circumventing the 180-day rule. Indeed, the State was not without options at the time the nol pros was entered. The prosecutor could have asked the trial court for a one-day delay in order to continue attempting to locate the victim's son. Although the reception court judge had denied the State's request for a postponement shortly earlier, further developments had occurred regarding a previously available witness becoming unavailable. Under these circumstances, the trial judge might have been willing to consider a brief delay.

The prosecutor also could have asked to return to reception court to revisit the request for a postponement in light of the victim's son becoming unreachable. Mason asserts that because the reception court had already found that witness unavailability did not constitute good cause for postponement, the circuit court would have similarly rejected a request to postpone based upon the victim's son's unavailability. We disagree. The circumstances regarding the victim's son's sudden unavailability are quite different than those surrounding Ms. Morris's unavailability. Unlike Ms. Morris, the victim's son had been cooperating with the State up to that point in time and had suddenly become unavailable for reasons then-unknown to the prosecutor.

Alternatively, the prosecutor could have asked the trial court to delay witness testimony until the next morning. At the time the nol pros was entered, it was 11:49 a.m. It is not unreasonable to believe that voir dire, jury selection, a lunch recess, and opening

statements would consume much of the rest of the day. Furthermore, the prosecutor may have believed it likely that he would be able to locate the victim's son relatively quickly given his previous cooperation with the State.

We reject Mason's attempts to analogize this case to *State v. Price*, 385 Md. 261 (2005), *Alther v. State*, 157 Md. App. 316 (2004), *Wheeler v. State*, 165 Md. App. 210 (2005), and *Ross v. State*, 117 Md. App. 357 (1997). The Court of Appeals discussed these cases in *Huntley*, *supra*, and described them as cases in which "the State's proven purpose in nol prossing the charges was to evade the trial court's or administrative judge's denial of the State's motion for a continuance or postponement, or to force rescheduling of a trial date for which it was not ready to proceed." 411 Md. at 296-97; *see id.* at 297 n.12 (explaining that in *Wheeler*, the State's entry of a nol pros had the necessary effect of circumventing the Hicks rule because it "essentially evaded the trial court's determination that there was no good cause to postpone the case and that trial should proceed as scheduled"). In this case, as we have explained, although the State's postponement request had been denied earlier that day, the circumstances changed significantly following the denial of the State's postponement request and the entry of a nol pros approximately ninety minutes later.

Indeed, in *State v. Akopian*, 155 Md. App. 123, 127 (2004), we considered a similar sudden change of circumstances that occurred following the denial of a continuance request and leading to the entry of a nol pros. In *Akopian*, certain witnesses were unavailable on the trial date, and the State requested a one-day continuance in order to ensure that all the

witnesses were present. When denying the postponement request, the trial court explained, "No. You can pick the jury. You can get started. Do whatever you need to today. And if you want to start the testimony, you can do it tomorrow morning." *Id*. When the case was called to trial, the defendant waived his right to a jury trial and informed the court that he had no further motions. The State renewed its motion for a continuance, which was denied, and the State subsequently nol prossed the charges. After re-indicting the defendant, the State attempted to set a new trial date within the original 180-day time period but was unable to do so. On appeal, we held that the State's use of the nol pros had neither the necessary effect nor the purpose of circumventing the 180-day rule. *Id.* at 142. We observed that at the time the nol pros was entered, fifty days remained before the *Hicks* date. *Id.* We further emphasized the defendant's "unexpected waiver of his right to trial by jury, and election of a bench trial, effectively pulled the rug out from under the State." *Id.* at 143. In the present case, the sudden and unexpected unavailability of the State's witness similarly affected the State's ability to present its case against Mason.

Because the prosecutor had other options available at the time the nol pros was entered, dismissal of the case for violation of the 180-day rule was not inevitable. Accordingly, we hold that although the entry of the nol pros in the manslaughter case had the actual effect of delaying Mason's trial, the motions court appropriately determined that the nol pros did not have the necessary effect of circumventing the 180-day rule.

II.

Mason further asserts that the trial court erred when it found no violation of his constitutional right to a speedy trial. The Sixth Amendment to the United States Constitution guarantees defendants charged in criminal proceedings a speedy trial. The constitutional right to a speedy trial serves "'to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.'" *United States v. Loud Hawk*, 474 U.S. 302, 312 (1986) (*quoting United States v. Ewell*, 383 U.S. 116, 120 (1966)).

We review "without deference a trial court's conclusion as to whether a defendant's constitutional right to a speedy trial was violated." *Howard v. State*, 440 Md. 427, 446-47 (2014). We make "our own independent constitutional analysis[,]" but nonetheless accept the trial court's "findings of fact unless clearly erroneous." *Glover v. State*, 368 Md. 211, 220-21 (2002). Our analysis is "practical, not illusionary, realistic, not theoretical, and tightly prescribed, not reaching beyond the peculiar facts of the particular case." *State v. Bailey*, 319 Md. 392, 415 (1990).

When addressing an alleged violation of "a defendant's right to a speedy trial, as prescribed by the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights, Maryland courts apply the four-factor balancing test from *Barker v. Wingo*, 407 U.S. 514 (1972)." *Hayes & Winston v. State*, ____ Md. App. ___, Case Nos. 500 & 556, Sept. Term 2019 (filed Aug. 3, 2020), slip op. at 26-27. "Those

factors are: the "'[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" *Id.* at 27 (quoting *Barker*, *supra*, 407 U.S. at 530). "None of these factors is 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Id.* (quoting *Bailey*, *supra*, 319 Md. at 413-14 (1990) (quoting *Barker*, *supra*, 407 U.S. at 533)).

"[T]he first factor, the length of the delay, is a 'double enquiry,' because 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). Generally, when assessing the length of the delay, the "speedy trial clock starts ticking when a person is arrested or when a formal charge is filed against him." *Clark v. State*, 97 Md. App. 381, 3817 (1993). "[O]rdinarily, the period during which no prosecution is pending as a result of a good faith dismissal of charges by the State . . . from nolle pros to indictment, is not considered in the speedy trial analysis. Where, however, the dismissal was not in good faith, the entire period, counting from the date of arrest or formal charge under the first prosecution, controls." *State v. Henson*, 335 Md. 326, 338 (1994).

Only the period of time from when Mason was re-indicted is considered for the speedy trial analysis. *Id.* at 438 ("[W]here the State terminates a prosecution in good faith, *i.e.* it does not intend to circumvent the speedy trial right, and the termination does not have that effect, the period preceding the earlier dismissal is not counted in the speedy trial

analysis.”).[5] As we have already explained, the State’s decision to enter a nol pros in the manslaughter case was based upon the sudden and unanticipated unavailability of the victim’s son after he was, unbeknownst to the prosecutor at the time, ejected from the courthouse. This was not an instance where a dismissal was entered in bad faith. Accordingly, for our consideration of the period of delay, we look to the length of time between when Mason was re-indicted on March 21, 2019 and when Mason entered his guilty plea on October 1, 2019 -- a period of under seven months. Although “no specific duration of delay constitutes a *per se* delay of constitutional dimension . . . [the Court of Appeals] ha[s] employed the proposition that a pre-trial delay greater than one year and fourteen days was ‘presumptively prejudicial’ on several occasions.” *Glover*, 368 Md. at 223. In our view, a delay of under seven months does not constitute a delay of constitutional dimension, and, therefore, does not trigger a speedy trial analysis.

[5] We recently reiterated this principle in *Raghbir Singh v. State*, ____ Md. App. ____, No. 3365, Sept. Term 2018 (Ct. of Spec. App. Aug. _____, 2020). In *Singh*, we acknowledged the general rule “‘that where the State terminates a prosecution in good faith, i.e. it does not intend to circumvent the speedy trial right, and the termination does not have that effect, the period preceding the earlier dismissal is not counted in the speedy trial analysis.’” Slip op. at 17. *Singh*, however, did not involve the dismissal of a prosecution followed by a subsequent re-indictment but instead involved a superseding indictment that contained the charges in the initial indictment and also added new charges. *Id.* at 1. In that context, we adopted the analysis set forth in *United States v. Handa*, 892 F.3d 95 (1st Cir. 2018), holding that the bringing of an additional charge in a superseding indictment “‘does not reset the Sixth Amendment speedy trial clock to the date of a superseding indictment where (1) the additional charge and the charge for which the defendant was previously accused are based on the same act or transaction, or are connected with or constitute parts of the common scheme or plan previously charged, and (2) the government could have, with diligence, brought the additional charge at the time of the prior accusation.’” *Singh*, slip op. at 21-22 (quoting *Handa*, supra, 892 F.3d at 106).

Even if we were to assume *arguendo* that the length of the delay was calculated from Mason's initial arrest on the first charges, the total period of time was shorter than fourteen months. As we have explained, the length of the delay in this case was not lengthy enough to trigger a full *Barker v. Wingo* analysis. However, we shall address the remaining factors because, in our view, even if we assume *arguendo* that the delay was calculated from the date of Mason's original arrest, it is beyond dispute that there was no violation of Mason's constitutional right to a speedy trial. We agree with the trial court that a pre-trial delay of under fourteen months is "long" but "not egregious," and, accordingly, this factor is entitled to little weight.

The reason for the delay in Mason's case was, as the trial court found, "primarily because [the victim's son] was thrown out of the courthouse" on the trial date. Mason asserts that the reason for the delay is attributable to the State because the State requested postponements while Mason did not. The United States Supreme Court has explained, however, that "a valid reason [for a delay], such as a missing witness, should serve to justify appropriate delay." *Barker*, 407 U.S. at 531. We agree with the motions court's assessment that, under the circumstances, the reason for the delay was "not attributable to the State or only lightly so."

The third factor, the assertion of the right to a speedy trial, weighs in favor of Mason given that Mason objected to the State's requests for postponement. In our view, however, this factor does not weigh particularly heavily, particularly in light of the relatively short period of the delay as well as, as we shall explain *infra*, the minimal prejudice. *See Glover*,

supra, 368 Md. at 228 ("Often the strength and timeliness of a defendant's assertion of his speedy trial right indicate whether the delay has been lengthy and whether the defendant begins to experience prejudice from that delay."). We further observe that although Mason objected to the State's postponement request, he did not expressly assert his constitutional right to a speedy trial at any time.

The final factor, actual prejudice to the defendant, is directed toward a consideration of three interests: "(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." *Vaise v. State*, 246 Md. App. 188, 234 (2020). The first two interests are "generally afforded only slight weight," *Hallowell v. State*, 235 Md. App. 484, 518 (2018), while the third interest, the impairment of the defense, is the most important. *Wilson v. State*, 148 Md. App. 601, 639 (2002) ("The most important factor establishing prejudice is the inability to prepare one's defense."). As the motions court observed, the "prejudice . . . accruing to [Mason] in this case is the fact that he's been incarcerated." There was "no specific prejudice in the sense of . . . a witness [who had] died or moved out of the state or anything that that." We agree with the motions court that this factor is entitled to minimal weight.

As we have explained *supra*, the less than seven-month period of delay in this case is not a delay of constitutional dimension, and, therefore, does not trigger a speedy trial analysis. However, assuming *arguendo* that the delay was calculated from Mason's initial arrest on the first charges, the total period of time was shorter than fourteen months, and,

taking into consideration all of the *Barker* factors, we would conclude that Mason was not denied his constitutional right to a speedy trial. Accordingly, we affirm.

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