Circuit Court for Caroline County
Case Nos. C-05-CR-17-000069
K-15-010703
K-15-010709
K-15-010755

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1956 & No. 6, 7, 8

September Term, 2017 & September Term, 2018

CHRISTOPHER ERIC GLANDEN

v.

STATE OF MARYLAND

Berger,
Friedman,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 21, 2019

Christopher Eric Glanden was convicted of possession of fentanyl with intent to distribute (the "fentanyl conviction"). The fentanyl conviction violated his probation in three other cases. He separately appealed both the fentanyl conviction and the violations of probation and we, on our own motion, consolidated the appeals. *First*, we will hold that the circuit court erred in denying Glanden an evidentiary hearing on his motion to suppress evidence and we will order a limited remand to permit the court to hold that evidentiary hearing. *Second*, we will hold that Glanden's constitutional right to a speedy trial was not violated in the fentanyl conviction. And, *third*, we will comment on Glanden's violations of probation and will remand that issue too, so that it may be considered anew in light of the outcome of the evidentiary hearing.

BACKGROUND

On July 29, 2016, Glanden's mother, believing Glanden to have overdosed, called 911. A police officer was sent to the home to provide emergency medical assistance. While in Glanden's bedroom, the officer saw a tennis shoe filled with several wax paper envelopes of the type in which illegal drugs are frequently packaged. When Glanden was taken outside to an ambulance, a second officer patted him down and discovered more of the wax paper envelopes in the front pockets of his shorts. The wax paper envelopes in both caches were found to contain drugs.

ANALYSIS

I. Denial of Suppression Hearing

Apparently, there was some confusion below and Glanden's motion to suppress evidence was denied before he had an evidentiary hearing. Glanden argues to this Court

that it was error not to give him that evidentiary hearing. The State confesses error. We agree. Evidentiary hearings in suppression motions are at least customary, *State v. Brown*, 324 Md. 532, 539 n.1 (1991), and certainly necessary when, as here, suppression turns on the credibility of the police witnesses.

While the parties agree that there was an error, they disagree on the appropriate remedy. Glanden argues that irrespective of the outcome of the evidentiary hearing, he should receive a new trial. The State, by contrast, argues that a limited remand is the proper remedy because if the motion to suppress is denied, a new trial will be unnecessary. On this too, we agree with the State.

A limited remand, such as the State proposes, would be inappropriate if the issues at the suppression hearing were "an integral part of the trial." *Lodowski v. State*, 307 Md. 233, 257 (1986) (quoting *Gill v. State*, 265 Md. 350, 357 (1972)). More specifically, a limited remand "may be suitable to correct procedures subsidiary to the criminal trial, [but] it can never be utilized to rectify prejudicial errors committed during the trial itself." *Id*. at 256-57. In Glanden's case, the jury only heard testimony on the circumstances surrounding the discovery of drugs not their admissibility. As a result, Glanden's jury wasn't tainted with what we may subsequently discover to be inappropriate knowledge. Therefore, we will issue a limited remand of this case to the circuit court without affirmance or reversal so that it may conduct an evidentiary hearing on the motion to suppress. If the circuit court grants the motion to suppress, then the prior judgment must be vacated and a new trial ordered. On the other hand, if the circuit court denies the motion to suppress, the prior judgment is affirmed.

II. Speedy Trial

The Sixth Amendment to the United States Constitution guarantees criminal defendants a speedy trial. We apply a four-factor balancing test in which the conduct of both the State and the defendant are weighed to determine whether a defendant's right to a speedy trial has been violated. The four factors are: "(1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant." *State v. Kanneh*, 403 Md. 678, 688 (2008) (quoting *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). "[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." *Kanneh*, 403 Md. at 688.

The parties disagree about when to start the clock for computing the delay and, because it is outcome determinative, that is where we will focus. Glanden was originally arrested on August 17, 2016 and charged with possession with intent to distribute heroin. On September 27, 2016, the State received a laboratory report, which determined that the drug discovered in Glanden's possession was fentanyl, not heroin. The State dismissed the heroin charges (although not until January 4, 2017) and, on February 22, 2017, filed new charges against Glanden for possession with intent to distribute fentanyl. Based on these facts, Glanden argues that the speedy trial clock should begin on August 17, 2016, the date

of his initial arrest, while the State argues that the speedy trial clock should begin on February 22, 2017, when it filed new charges against Glanden.[1]

The governing law is clear: after a good faith dismissal, the defendant's speedy trial clock begins again on the filing of new charges. *See, e.g.*, *Greene v. State*, 237 Md. App. 502, 513-14 (2018). A good faith dismissal is one that was neither intended to nor had the effect of circumventing the defendant's speedy trial right. *Id*. at 514.

As to the first half of the test—whether the government dismissed the original charges with the *intent* of circumventing Glanden's speedy trial rights—the answer is "no." Glanden himself argues that the delay was negligent, thus dispelling the possibility that the delay was intentional. As to the second half of the test—whether the government dismissing the original charges had the *effect* of circumventing Glanden's speedy trial rights—we conclude that the answer here too is "no." The question of effect is durational—even if there was no intent, we must inquire whether the actions of the State caused an unacceptable delay. In Glanden's case, the State's failure to promptly correct charges based on the laboratory report caused a three-and-a-half-month delay. When compared to delays that have been permitted by this Court, Glanden's delay, while not insignificant, lacks the effect of circumventing the speedy trial right. *See Greene*, 237 Md. App. at 515-19 (holding that the State was not acting in bad faith when it dismissed charges roughly four months after filing); *White v. State*, 223 Md. App. 353, 384 (2015) (holding that a roughly three-month delay between the dismissal and reinstitution of charges did not have the effect of

[1] Each side also proposes other dates for our consideration. For some legal and some factual reasons, we reject the proffered alternatives.

denying the speedy trial right). As a result, we hold that the State dismissed the original charges in good faith and, therefore, that the speedy trial clock began to run anew on February 22, 2017.

Having established the start date for the speedy trial clock, we return to the first factor of the *Barker* test: determining whether the delay leading up to trial was of sufficient length to trigger a speedy trial analysis. *Kanneh*, 403 Md. at 688. Glanden experienced a four-and-a-half-month delay from February 22, 2017 to his trial date, July 6, 2017. This amount of time is not of constitutional significance and we, therefore, hold that Glanden's right to a speedy trial was not violated. *See Glover v. State*, 368 Md. 211, 220 (2002) ("In reviewing the judgment on a motion to dismiss for violation of the constitutional right to a speedy trial, we make our own independent constitutional analysis.").

III. Violation of Probation

Glanden's apparent overdose also triggered the State to charge him with violations of probation for three prior convictions. At his consolidated violations hearing, the State introduced a certified copy of Glanden's fentanyl conviction. Based on that evidence, the circuit court found that Glanden violated three conditions of his probation in each case: failure to obey all laws; illegal possession, use, or sale of a controlled substance; and failure to abstain totally from alcohol, illegal substances, and abuse of any prescription drug. Glanden was sentenced to time served for each of these violations.

In Section I of this Opinion, we ordered a limited remand of Glanden's fentanyl conviction so that the circuit court may hold an evidentiary hearing on Glanden's motion to suppress evidence. At least for now, this means there is no evidentiary support for the

finding that Glanden violated his probation. Therefore, as to the violations of probation too, we remand without affirmance or reversal. Obviously, it will be up to the State to decide whether to charge Glanden with violations of probation again and, if so, how to prove those violations.[2]

CRIMINAL CASE 05-CR-17-000069 REMANDED, WITHOUT AFFIRMANCE OR REVERSAL, TO THE CIRCUIT COURT FOR CAROLINE COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY CAROLINE COUNTY.

VIOLATION OF PROBATION ORDERS K-15-010703, K-15-010709, AND K-15-010755 REMANDED, WITHOUT AFFIRMANCE OR REVERSAL, TO THE CIRCUIT COURT FOR CAROLINE COUNTY FOR

[2] We note that in this appeal the parties have briefed two important questions about Glanden's alleged violations of probation and his potential immunity from penalty for those violations. Both questions concern Md. Code Crim. Pro. ("CP"), § 1-210, which provides limited immunity to those involved in seeking and receiving medical assistance during a drug overdose. *See generally Noble v. State*, 238 Md. App. 153 (2018). *First*, Glanden argued that the protections of CP § 1-210(d) immunize him from prosecution for violation of probation. Unlike subsections (b) and (c) of CP § 1-210, however, which enumerate the crimes that they immunize, subsection (d) is arguably ambiguous about its parameters. Thus, it remains an open question whether subsection (d) applies when the predicate violation is a more serious drug crime. *Second*, the parties disagree about whether the certified copy of Glanden's fentanyl conviction qualifies under CP § 1-210(d) as separate and distinct from the testimony of the emergency medical providers who came in response to his mother's call for help. *See* CP § 1-210(d) (stating that a person is immunized from sanction for probation violation if "the evidence of the violation was obtained *solely* as a result of the person seeking, providing, or assisting with the provision of medical assistance") (emphasis added). If the certified copy of conviction is separate and distinct, Glanden might not be entitled to immunity under CP § 1-210(d). Conversely, if it is merely a restatement of the same prohibited evidence, Glanden might be entitled to immunity. Of course, as pointed out in its brief, the State can avoid that question by introducing evidence of the violation from a different source. Regardless, because of the procedural posture of the case, we cannot resolve either of these questions and must wait and see if they arise.

FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY CAROLINE COUNTY.