

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0594

September Term, 2015

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GARY LEE RATCHFORD

v.

STATE OF MARYLAND

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Graeff,  
Friedman,  
Thieme, Raymond G. Jr.  
(Retired, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: August 26, 2016

\*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.

On May 5, 2015, a jury in the Circuit Court for Baltimore County convicted Gary Lee Ratchford, appellant, of theft under \$1,000. The court sentenced appellant to “time served.”

On appeal, appellant presents one question for our review, which we have rephrased, as follows:<sup>1</sup>

Did the circuit court err in denying appellant’s motion to dismiss for an alleged violation of his right to a speedy trial?

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

### **FACTUAL AND PROCEDURAL BACKGROUND**

On March 31, 2014, appellant approached the exit of a CVS store in Baltimore County. As he was exiting the store, appellant attempted to lift a large duffle bag over the security sensors, however, merchandise inside the bag activated the alarm. Appellant continued out of the store and into the parking lot, where he was stopped by a Baltimore County Police detective. Appellant admitted to the detective that he had not paid for the items in his bag, which included electronics and soap valued at \$317.77, including tax.

Appellant was arrested and charged, in the District Court of Maryland sitting in Baltimore County, with theft of property under \$1,000. Immediately thereafter, appellant was incarcerated for an outstanding parole violation, and he remained incarcerated during the pendency of the charge in this case.

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<sup>1</sup> Appellant phrased the question: “Was Appellant denied his constitutional right to a speedy trial when he was incarcerated for over 13 months between arrest and trial in a simple shoplifting case?”

On September 16, 2014, appellant requested a jury trial, and the case was transferred to the Circuit Court for Baltimore County. Prior to trial, which occurred on May 5, 2015, appellant moved to dismiss the charges for violation of his constitutional right to a speedy trial. The court denied the motion.

### DISCUSSION

Appellant contends that he was denied his constitutional right to a speedy trial.<sup>2</sup> In reviewing a motion to dismiss for violation of the right to a speedy trial, we make “our own independent constitutional analysis” to determine whether this right has been denied. *Glover v. State*, 368 Md. 211, 220 (2002). “We perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept a lower court’s findings of fact unless clearly erroneous.” *Id.* at 221.

The United States Supreme Court has established a four-factor balancing test to assess whether a defendant’s right to a speedy trial has been violated. *Barker v. Wingo*, 407 U.S. 514, 530-32 (1972). These four factors include: “[l]ength of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.” *Id.* at 530; *State v. Kanneh*, 403 Md. 678, 688 (2008). 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.” *Jules v. State*, 171 Md. App. 458, 482 (2006) (quoting *Barker*, 407 U.S. at 533), *cert. denied*, 396 Md. 525 (2007).

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<sup>2</sup> See U.S. CONST. amend. VI; MD. DECL. RIGHTS, art. 21.

Prior to conducting the four-factor *Barker* analysis, a court must determine whether the length of delay is of such constitutional dimension as to trigger the more in-depth analysis. *Kanneh*, 403 Md. at 687-88; *Glover*, 368 Md. at 222-23. The length of the delay is measured from the date of the defendant’s arrest until the date of the ultimate trial. *Divver v. State*, 356 Md. 379, 388-89 (1999); *Epps v. State*, 276 Md. 96, 109 (1975). Although “no specific duration of delay constitutes a *per se* delay of constitutional dimension . . . we have 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.

The parties agree that the pre-trial delay in this case – thirteen months, five days – was sufficient to trigger the speedy trial analysis under *Barker*. Accordingly, we turn to the relevant four factors.

### **The Length of Delay**

In addition to being a triggering factor, the length of the delay is a factor that must be weighed in the *Barker* analysis. As indicated, the delay here from arrest to trial was approximately 13 months. Delays of much greater length have been found not to violate the constitutional right to a speedy trial. *See Barker*, 407 U.S. at 533-36 (five years); *Kanneh*, 403 Md. at 689-90 (35 months); *Randall v. State*, 223 Md. App. 519, 558 (2015) (25 months); *Malik v. State*, 152 Md. App. 305, 317-18 (23 months), *cert. denied*, 378 Md. 68 (2003); *Wheeler v. State*, 88 Md. App. 512, 517 (1991) (22 months); *Marks v. State*, 84 Md. App. 269, 282 (1990) (22 months), *cert. denied*, 321 Md. 502 (1991). The Court of Appeals has stated that the length of the delay “is the least determinative of the four factors

that we consider in analyzing whether [a defendant’s] right to speedy trial has been violated.” *Kanneh*, 403 Md. at 690.

The Court of Appeals has, however, looked to the nature of the case in determining the weight to be given to the length of the delay. *Divver*, 356 Md. at 390-91. In *Divver*, where the Court found that a delay of one year and sixteen days constituted a violation of the right to a speedy trial, the Court stated as follows regarding the length of the delay:

[T]he delay is of uniquely inordinate length for a relatively run-of-the-mill District Court case. Trial of the case to verdict on guilt or innocence presented little, if any, complexity. There was one witness for the State, a police officer whose appearance was subject to the control of the State, and the only witness for the defense was the accused himself. Given these circumstances, the length of the delay in the instant matter operates more heavily in *Divver*’s favor than would usually be the case in many circuit court prosecutions.

*Id. Accord State v. Bailey*, 319 Md. 392, 411 (the nature of the charges involved affects the length of delay since “the delay that can be tolerated for an ordinary street crime is considerably less than a serious, complex ... charge.”) (quoting *Barker*, 407 U.S. at 531), *cert. denied*, 498 U.S. 841 (1990).

Here, unlike in *Divver*, which involved a trial in District Court, this case involved a request for a jury trial, resulting in jury-related delays, discussed *infra*. Under these circumstances, the length of delay weighs against the State, but only slightly.

### Reason for Delay

The next factor we consider is the reason for the delay. “[D]ifferent reasons should be assigned different weights.” *Kanneh*, 403 Md. at 690. In *Jones v. State*, 279 Md. 1, 6 (1976), *cert. denied*, 431 U.S. 915 (1977), the Court of Appeals explained:

In this regard a continuum exists whereby a deliberate attempt to hamper the defense would be weighed most heavily against the State, a prolongation due to the negligence of the State would be weighed less heavily against it, a delay caused by a missing witness might be a neutral reason chargeable to neither party, and a delay attributable solely to the defendant himself would not be used to support the conclusion that he was denied a speedy trial.

*Id.* at 6-7.

In their briefs, the parties divide the 13-month delay into five time periods and address the delays within each period separately. We will do the same.

#### **Delay between arrest on March 31, 2014 and September 16, 2014, prayer for jury trial on (five months, sixteen days):**

The period between the arrest and the first scheduled trial date generally is considered pre-trial preparation, which is neutral and not weighed against either party. *See Malik*, 152 Md. App. at 318. Here, the period of five months and sixteen days between appellant’s arrest and the day on which he could have been tried in the District Court is consistent with a reasonable pre-trial preparation period, even considering that it is a relatively simple shoplifting case. *See Lloyd v. State*, 207 Md. App. 322, 330 (2012) (two months and twenty-nine days between arrest and date defendant could have been tried in District Court on charge of driving while intoxicated was deemed a neutral delay not chargeable to either party), *cert. denied*, 430 Md. 12 (2013); *Ferrell v. State*, 67 Md. App. 459, 463 (1986) (a period of almost five months between arrest and first trial date on a

charge of breaking into a storeroom was considered pre-trial preparation and therefore neutral). Accordingly, the delay between appellant’s arrest and his first scheduled trial date is deemed neutral.

**Delay between the September 16, 2014, jury trial prayer and the November 26, 2014, circuit court trial date (two months, ten days):**

Generally, the delay between a defendant’s prayer for a jury trial in District Court and his first scheduled circuit court trial date is chargeable to the defendant. *See Lloyd*, 207 Md. App. at 331 (delay caused by defendant’s prayer for a jury trial in circuit court counted against defendant for speedy trial purposes). Although appellant argues that he should not be penalized for exercising his constitutional right to a jury trial, and therefore, the delay between his prayer for a jury trial and his first scheduled circuit court trial date should not weight against him, he cites no persuasive reason for departing from the general rule that this delay is chargeable to appellant.

**Delay between the November 26, 2014, postponement and the initial February 19, 2015, trial date (two months, twenty-four days):**

On November 26, 2014, appellant’s initial trial date in circuit court was postponed because no jurors were available. Although it ultimately is the State’s responsibility to ensure that adequate resources are available for trial and to avoid even “neutral” delays, *see Barker*, 407 U.S. at 531, a delay due to a lack of a jury is given neutral weight. *See Glover*, 368 Md. at 227 (“The second postponement in the petitioner’s case occurred because, again, the [c]ircuit [c]ourt was unable to provide both judge and jury for the petitioner’s trial. While it is somewhat disturbing that a case would be scheduled twice

without a judge available, this basis for the postponement can only be deemed neutral.”). Accordingly, this period of delay is deemed neutral.

**Delay between the February 19, 2015, trial date and the April 22, 2015, trial date (two months, three days):**

Trial was postponed a second time because the State failed to issue a writ to transport appellant from the Department of Corrections to the courthouse. Maryland courts uniformly have held that it is the State’s responsibility to bring a defendant who is in custody to trial and the failure to do so constitutes inexcusable delay. *See Brady v. State*, 291 Md. 261, 267, *cert. denied*, 439 U.S. 839 (1981); *Wilson v. State*, 281 Md. 640, 641 (1978); *Randall*, 223 Md. App. at 546.

In the present case, however, the court indicated that, although it did “have some concerns with the State not transporting [appellant] in February,” it found, based on appellant’s testimony, that the State’s failure to transport appellant was due to appellant’s hospitalization at the time. Defense counsel responded that appellant was hospitalized on April 22, not on February 19, the date the State failed to transport him. Defense counsel requested permission to allow appellant to clarify the dates of his hospitalization, which the court denied.

The court’s finding presumably was based on appellant’s testimony at the May 5, 2015, hearing on appellant’s motion to dismiss that “the last time I went, came to court two weeks ago, the same day I left court I was admitted into JCI hospital.” The record shows that appellant appeared in court on April 22, 2015, which was two weeks prior to the May 5, 2015, hearing on the motion to dismiss. Therefore, “the last time [appellant] was in court,

two weeks ago” was April 22, 2015, not February 19, 2015. Accordingly, the court’s finding that appellant was hospitalized on February 19, 2015, was erroneous. The State’s failure to issue a writ to transport appellant on February 19, 2015, is weighed against the State.

**Delay between the April 22, 2015, trial date and the May 5, 2015, trial date (15 days):**

On April 22, 2015, appellant’s trial was postponed again because no jurors were available. As discussed above, delay for this reason is deemed to be neutral.

In sum, of the five periods of delay between appellant’s arrest and trial, one delay was attributable to appellant, one delay was attributable to the State, and the other delays were neutral. As a result, the reasons for the delays are a draw; this factor weighs neither for nor against appellant.

**Assertion of the Right**

The third *Barker* factor requires analysis of whether and to what extent a defendant asserted his or her right to a speedy trial. 407 U.S. at 531. As the Court of Appeals observed: “‘The more serious the deprivation, the more likely a defendant is to complain.’” *Bailey*, 319 Md. at 409 (quoting *Barker*, 407 U.S. at 531). “Because the strength of the defendant’s efforts will be affected by the length of the delay, asserting the speedy trial right weighs heavily in determining if the right has been denied.” *Dalton v. State*, 87 Md. App. 673, 688 (citation and quotations omitted), *cert. denied*, 325 Md. 16 (1991).

Here, at the outset of the case, defense counsel included requests for a speedy trial in the notices of appearance in the District Court. Appellant renewed his speedy trial claim during the postponements in circuit court on February 19, 2015, and again on April 22,

2015, when no jurors were available for trial. On May 5, 2015, appellant asserted his right to a speedy trial through his motion to dismiss, which was argued before the court. Appellant consistently asserted his right to a speedy trial, and this factor, therefore, weighs in his favor. *See Glover*, 368 Md. at 228 (noting that appellant, who twice asserted his right to a speedy trial, one year apart, “without question, satisfies this factor”).

### **Prejudice**

“[T]he most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice.” *Henry v. State*, 204 Md. App. 509, 554 (2012). Prejudice should be considered in light of the interests the speedy trial right was designed to protect: “(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.” *Barker*, 407 U.S. at 532. Of these factors, the last is the most serious because “the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Id.*

Appellant concedes that he did not suffer “impairment of the defense.” Nonetheless, he maintains that actual prejudice can be based solely on “oppressive pretrial incarceration” or “anxiety and concern.” Appellant claims that he suffered both presumptive and actual oppressive pretrial incarceration because he was denied access to rehabilitative and work release programs as a result of the detainer in this case.<sup>3</sup>

Regarding anxiety and concern, appellant testified that the case had been “weighing on his mind” because “[he] can’t do anything until [he] gets this case resolved.” As the

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<sup>3</sup> Because appellant was incarcerated on an outstanding parole violation, the pending charge in this case functioned as a detainer.

Court in *Glover* explained, however, “[a]ctual prejudice requires more than an assertion that the accused has been living in a state of constant anxiety due to the pre-trial delay.” 368 Md. at 230.

Here, there is no showing of actual prejudice resulting from the pre-trial delay. This factor weighs in favor of the State.

### **Balancing**

With regard to the final step in the analysis, the Court of Appeals has noted:

Balancing the four factors is undoubtedly a sensitive task, completely dependent on the specific facts presented by each unique case. In carrying out this difficult task, we are mindful that our task is to ensure that the petitioner’s right to a speedy trial has not been violated; we are also mindful, however, that delay is often the result of efforts to ensure the highest quality of fairness during a trial.

*Glover*, 368 Md. at 231-32.

Here, although the length of delay weighs against the State, it does so only slightly, and the reasons for delay were neutral. Appellant did assert his right to a speedy trial, but ultimately, he failed to demonstrate that he suffered any actual prejudice warranting dismissal of the case.

Under these circumstances, we hold that the delay in this case did not violate appellant's right to a speedy trial. Accordingly, the trial court did not err in denying his motion to dismiss.

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