UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1280

September Term, 2015

SHELDON HOPKINS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: June 16, 2016

Sheldon Hopkins, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of second-degree murder and sentenced to 30 years of imprisonment. Appellant raises three questions on appeal, which we have reordered:

I. Did the motion court err when it denied appellant's motion to dismiss alleging his constitutional rights to a speedy trial had been violated?

II. Did the motion court err when it denied appellant's motion to dismiss alleging his right to be tried within 180-days had been violated under Md. Rule 4-271(a)?

III. Did the trial court err when it restricted appellant's cross-examination of the medical examiner?

For the following reasons, we shall affirm the judgment.

FACTS

The State produced evidence, including the testimony of three eyewitnesses, that appellant argued with and then stabbed Donnell Bishop to death outside the Bermuda Bar near the corner of Rutland and North Avenue in Baltimore City on the evening of November 12, 2012. The defense was mistaken identification. Appellant called no witnesses on his behalf. After four days of trial, the jury acquitted appellant of first-degree murder and openly carrying a deadly weapon but found him guilty of second-degree murder. We shall provide additional facts below in addressing the questions raised by appellant.

DISCUSSION

I.

Appellant argues that the trial court erred in denying his motion to dismiss his case because the State violated his constitutional rights to a speedy trial. He asserts that the State is responsible for much of the delay in bringing him to trial, and that a balancing of the four factors listed in *Barker v. Wingo*, 407 U.S. 514 (1972) weigh in favor of dismissal. The State disagrees as to both assertions and argues that the trial court did not err.

A defendant's constitutional right to a speedy trial is found in the Sixth Amendment of the United States Constitution, applied to the States by the Due Process Clause of the Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213, 222-23 (1967). This right is also guaranteed by Article 21 of the Maryland Declaration of Rights. *Glover v. State*, 368 Md. 211, 221 (2002). We review the trial court's denial of a motion to dismiss on speedy trial grounds by conducting a *de novo* constitutional analysis. *Jules v. State*, 171 Md. App. 458, 481-82 (2006), *cert. denied*, 396 Md. 525 (2007). Nonetheless, we defer to the trial court on the findings of historical facts, unless clearly erroneous. *Glover*, 368 Md. at 220-21.

We apply the balancing test articulated by the United States Supreme Court in *Barker, supra*, to determine whether a defendant's speedy trial right has been violated. *State v. Kanneh*, 403 Md. 678, 687 (2008)(Maryland courts have "consistently applied the four factor balancing test" set forth in *Barker*). The four factors of a *Barker* analysis consist of the length of the delay, the reason for the delay, the defendant's assertion of his right to a speedy

trial, and any prejudice to the defendant because of the delay. *Divver v. State*, 356 Md. 379, 388 (1999). "None of the four factors [is] either a necessary or sufficient condition to finding a denial of speedy trial rights. Rather they are related factors and must be considered together with such other circumstances as may be relevant." *Id.* at 394 (quotation marks, citations, and brackets omitted).

Length of Delay

This initial *Barker* factor "is actually a double enquiry." *Doggett v. United States*, 505 U.S. 647, 652 (1992).

> Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay . . . since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness. If the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.

Doggett, 505 U.S. at 651-52 (citation omitted). The length of delay for speedy trial analysis is measured from the earlier of the date of arrest (or filing of indictment or other formal charges) to the date of trial. *United States v. Marion*, 404 U.S. 307, 320-21 (1971).

Appellant was arrested on February 18, 2013, and his trial began on April 29, 2015. The State agrees that the delay of 26 months and 11 days between appellant's arrest and his trial was presumptively prejudicial. *See Ratchford v. State*, 141 Md. App. 354, 360 (2001) (calling an eighteen-month delay "more than enough to spark further analysis"), *cert. denied*,

368 Md. 241 (2002). Although the length of the delay is lengthy enough to support further analysis, it is not particularly egregious considering that appellant was charged with the most serious of crimes (first-degree murder) and that the trial occurred over four-days. *Glover*, 368 Md. at 224(the length of the delay "that can be tolerated is dependent, at least to some degree, on the crime for which the defendant has been indicted."). Moreover, "[t]he length of delay, in and of itself, is not a weighty factor." *Kanneh*, 403 Md. at 689 (quotation marks and citations omitted). *Cf. Howard v. State*, 440 Md. 427, 447-48 (2014)(delay of 28 months between arrest and trial did not require dismissal of case for speedy trial purposes); *Kanneh*, 403 Md. at 688-90 (delay of 35 months between arrest and trial did not require dismissal of case for speedy trial purposes).

Responsibilities for the Delay

We turn to the reasons assigned for the delay. The Supreme Court observed in *Barker*:

> [D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker, 407 U.S. at 531 (footnote omitted).

The following is a list of the relevant dates.

1. **February 18, 2013.** Appellant is arrested.

2. **March 26, 2013.** Appellant files an omnibus motion which includes a demand for a speedy trial.

3. **June 19, 2013.** First trial date postponed due to defense counsel's request to pursue additional investigation in light of discovery.[1]

4. **August 6, 2013.** Second trial date postponed because two State witnesses failed to appear.[2] The State explained that one is "very ill with kidney issues" and might be in the hospital. Defense counsel objected to the postponement.

5. **October 4, 2013.** Third trial date postponed because a State's witness failed to appear. The State explained that the witness had checked herself into "rehab" and could not be found. Defense counsel objected to the postponement.

6. **January 7, 2014.** Fourth trial date postponed because a State's witness failed to appear. The State explained that the witness, who also had kidney issues, had called her and the lead detective around Christmas and said that appellant's associates had threatened him about testifying. Defense counsel objected to the postponement.

7. **March 26, 2014.** Fifth trial date postponed because defense counsel was discharged for meritorious reasons at his and appellant's request (the two had disagreed about accepting a plea agreement during which appellant had spat on his attorney).

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[1] Defense counsel initially told the court that he was seeking a mutual request for a postponement, when the court asked for clarification, defense counsel admitted that the State had provided full discovery and he was satisfied with the discovery provided. Defense counsel then conceded that in fact "it's a defense request for postponement in light of discovery."

[2] The court initially framed the postponement as one requested by the State due to witness unavailability. Defense counsel conceded that he was not ready to proceed to trial – he explained that he wanted to pursue some discovery leads and that he had been unable to review some of the discovery with appellant because he was having trouble with his computer.

8. **June 3, 2014.** Sixth trial date postponed because appellant has not yet paid his new private counsel. The State was ready to proceed to trial.

9. **August 5, 2014.** Seventh trial date postponed by mutual request – appellant not yet finished paying for new counsel and a State's witness was in a car accident.

10. **October 15, 2014.** Eighth trial date postponed at defense counsel's request. She explained that she needed time to prepare for trial – she had only entered her appearance a month earlier and received discovery two days earlier.[3]

11. **January 12, 2015.** Ninth trial date postponed at defense counsel's request to obtain an expert witness.

12. **March 12, 2015.** Tenth trial date postponed because prosecutor on leave due to surgery. Defense counsel objected.

13. **April 27, 2015.** Eleventh trial date postponed because the court house was closed due to threats.

14. **April 29, 2015.** Trial commenced and lasted four days.

Appellant argues that the first delay of roughly four months between his arrest and his first trial date, February 18, 2013, to June 19, 2013, is attributable to the State because he was incarcerated and had "neither the duty nor the ability to bring himself to trial." While that is true, the postponement was sought by the defense to further investigate its case and case law permits a reasonable period of time for normal trial preparation. *See Malik v. State*, 152

[3] Although appellant emphasizes his defense counsel's statement that she had only received discovery from the State two days earlier, there is no suggestion in the record that full discovery had not already been provided and appellant makes no claim on appeal that he was denied timely discovery.

Md. App. 305, 318, *cert. denied*, 378 Md. 618 (2003)("time spent in pre-trial preparation is neutral and not charged either to the State or the defendant.") and *Ferrell v. State*, 67 Md. App. 459, 463-64 (1986)(delay of five months for normal pre-trial preparations is neutral and charged to neither party). Accordingly, this period is given neutral status.

We group the next three delays, totaling just less than six months, that were caused by the unavailability of State witnesses. The delay from June 19, 2013, to August 6, 2013, occurred because two State witnesses did not appear - one witness being seriously ill with kidney issues. The delay from August 6, 2013, to October 4, 2013, occurred because a State's witness did not appear but was in "rehab" and could not be located. The delay from October 4, 2013, to January 7, 2014, occurred because the State witness with kidney issues did not appear and had apparently been threatened about testifying at trial around Christmas by associates of appellant. Appellant baldly argues, without citing any case law, that these delays should be weighed heavily against the State.

Generally, the unavailability of a witness is afforded neutral status. *Barker*, 407 U.S. at 531 (a missing witness justifies an appropriate delay.). *See also Epps v. State*, 276 Md. 96, 111 (1975)(holding that a delay of two months and nine days caused by the incapacitating illness of a testifying police officer was a valid reason for justifying the delay and is not attributable to either prosecution or the defendant); *Lee v. State*, 61 Md. App. 169, 180 (a delay of four months caused by victim's unavailability is accorded neutral status), *cert. denied*, 303 Md. 115 (1985). The delay caused by an inability to locate witnesses, however,

may not always be appropriate and the appropriateness of the delay may depend on the degree of diligence with which the State attempted to locate the witnesses. *See State v. Farinholt*, 54 Md. App. 124, 134 (1983), *aff'd*, 299 Md. 32 (1984); *State v. Wynn*, 26 Md. App. 39, 42 (1975). Appellant makes no argument that the delay caused by the State's witnesses failure to appear was caused by the State's negligence or omission, and without more, we decline to weigh this delay against the State. Therefore, this period of less than six months due to unavailability of witnesses is afforded neutral status.

The delay of almost two months and three weeks from January 7, 2014, to March 26, 2014, due to appellant's discharge of his attorney, is attributable to the defense but likewise accorded neutral status. *Howard*, 440 Md. at 448 (giving neutral status to 183-day delay caused by the defendant when he discharged his first lawyer and his second lawyer needed time to prepare). The delay of two months and one week between March 26, 2014, and June 3, 2014, because appellant was still attempting to procure private counsel, is also attributable to the defense, but for the reasons given in *Howard*, we shall afford it neutral status.

The delay of roughly two months between June 3, 2014, and August 5, 2014, was due to a mutual request for postponement. Because the delay is attributable to both parties, it is given no dismissal weight. *See Marks v. State*, 84 Md. App. 269, 283 (1990), *cert. denied*, 321 Md. 502 (1991)(joint request for postponement is afforded neutral status and is not attributable to either party).

The delay of two months and ten days from August 5, 2014 to October 15, 2014, is attributable to the defense but accorded neutral status because his new attorney needed time to prepare for trial. *See Howard*, *supra*; *Howell v. State*, 87 Md. App. 57, 83-84(giving neutral status to time taken by new counsel to address prior judicial commitments and prepare for trial), *cert. denied*, 324 Md. 324 (1991). The delay of just less than two months between October 15, 2014, and January 12, 2015, for the defense to retain an expert witness is likewise attributable to the defense, but we accord it neutral status for the reasons stated above. Appellant does not mention this delay.

The delay of two months between January 12, 2015, and March 12, 2015, is attributable to the State because of medical leave, but the weight of this delay is limited. *See Ferrell v. State*, 67 Md. App. 459, 464 (1986)("we recognize that, because of the prosecutor's illness . . . the State is less culpable"); *Darby v. State*, 45 Md. App. 585, 589-90 (1980)(prosecutor illness is chargeable to the State but it is not accorded the same weight or significance as a deliberate delay). The delay of six weeks between March 12, 2015, and April 27, 2015, because the court house was closed due to threats is accorded neutral status. Appellant's case proceeded to trial two days later.

By way of summary, the total delay of 26 months and 11 days between appellant's arrest and his trial are attributable and weighted as follows. Two months are attributable to the State due to the prosecutor's medical leave. That delay is weighed lightly. The remaining roughly 24 months' delay is accorded neutral status. Of that delay four months

were justifiable for trial preparation, six months were justifiable because of missing State's witnesses, six weeks were justifiable because the court was closed due to threats, two months were neutral because it was a joint request for postponement, and the remaining nine months were justifiable for appellant to retain new counsel and bring new counsel up to speed. Consequently, although the overall delay weighs in appellant's favor, it does so lightly.

Assertion of Right

> Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Barker, 407 U.S. at 531-32. "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." *Glover*, 368 Md. at 228 (citations omitted).

Appellant argues that this factor should weigh heavily in his favor because he filed a motion demanding a speedy trial within days of the indictment, and he objected to each of the State's three requested postponements. We disagree.

Appellant's boiler plate speedy trial demand in his omnibus motion filed roughly two weeks after the indictment shall not be given appreciable weight. *Cf. Barker*, 407 U.S. at 529

(courts should "weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection."). To be sure, appellant objected to the State's requests for postponements, which occurred on August 6, 2013, October 4, 2013, January 7, 2014, and March 12, 2015. However, of the 10 total postponements, five of the postponements were attributable to him due to his desire to retain new counsel. Under the circumstances, this factor weighs lightly in favor of dismissal. *Cf. Jules*, 171 Md. App. at 486 (where the defendant demanded a speedy trial five days after indictment, and made two other speedy trial demands before being tried sixteen months after indictment, we found that the frequency of the demand was "not extraordinary" and that this factor weighed "lightly in favor of dismissal").

Prejudice

The final element of the *Barker* inquiry is whether the defendant suffered prejudice as a result of the delay. The Supreme Court has stated:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such 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. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

Barker, 407 U.S. at 532 (footnote omitted). Under *Barker*, "an affirmative demonstration of prejudice by the defendant is not necessary in order to prove a violation of the Sixth

Amendment speedy trial right." *Brady v. State*, 288 Md. 61, 66-67 (1980)(quotation marks and citations omitted).

Appellant does not argue that he suffered any impairment to his defense, the most serious form of prejudice, but instead argues that his pre-trial 26-months of incarceration was oppressive because he was confined to his cell "for 23 out of 24 hours a day" during which he was not allowed any personal letters or photographs. This is a bald argument with no support and which we accord no weight. *Cf. State v. Bailey*, 319 Md. 392, 417 (two years of "anxiety and concern" caused by the pending prosecution was a "bald" assertion which was unsupported by evidence or sufficient proffer so that it had "little significance"), *cert. denied*, 498 U.S. 841 (1990). We also note that the hearing court found that appellant suffered no impairment to his defense because of the delay.

Balancing

> 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.

Weighing all of the *Barker* factors, we conclude that the delay of 26 months and 11 days in bringing appellant to trial did not abridge his constitutional rights to a speedy trial. The delay certainly triggers the *Barker* inquiry, but "[t]he length of delay, in and of itself, is

not a weighty factor." *Kanneh*, 403 Md. at 689 (quotation marks and citations omitted). While the reasons for the delay weigh in appellant's favor, only two months of the delay weighs against the State, and it does not weigh heavily. While appellant asserted his right, it was not vigorous or forceful, and almost half of the delay was attributable to his actions in discharging and hiring new counsel. Lastly, while a delay of roughly 26 months assuredly would cause pre-trial anxiety, as mentioned, much of the delay was attributable to appellant's change of counsel, and he admittedly did not suffer an impairment of his defense. Under the circumstances, we find no error by the trial court in denying appellant's motion to dismiss based on a violation of his constitutional rights to a speedy trial.

II.

Appellant argues that the trial court erred in not dismissing the charges against him because his statutory right to a speedy trial was violated. Specifically, appellant argues that the State's explanation in making the critical postponement request – that two of its witnesses were not present – was pure speculation because the State failed to proffer that "she had either made or attempted any recent contact with those witnesses to ensure their attendance." The State initially argues that appellant has failed to preserve this argument for our review because he did not raise his argument at the hearing below, but in any event, appellant's argument lacks merit.

Md. Rule 4-271 and its statutory counterpart, Md. Code Ann., Crim. Proc. Art., § 6-103, require a criminal trial in the circuit court within 180 days after the earlier of

appearance of counsel or first appearance of the defendant in circuit court, *unless* the case is postponed by the administrative judge for good cause.[4] The purpose of the 180-day requirement is "to obtain prompt disposition of criminal charges; [the] enactment [of the statute] manifested the legislature's recognition of the detrimental effects to our criminal justice system which result from excessive delay in scheduling criminal cases for trial and in postponing scheduled trials for inadequate reasons." *State v. Hicks*, 285 Md. 310, 316 (1979). The 180-day rule is mandatory and dismissal of the criminal charges is the appropriate sanction for violation of the rule. *Id.* at 318. *See also State v. Parker*, 347 Md. 533, 537-38 (1995)(citing *Hicks*).

"The critical order by the administrative judge, for purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days." *State v. Frazier*, 298 Md. 422, 428 (1984). Once the critical date is determined, we apply a two-step analysis.

[4] Md. Rule 4-271 is titled "**Trial date in circuit court**" and provides, in pertinent part: "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 . . . and shall be not later than 180 days after the earlier of those events." Md. Rule 4-271(a)(1). Additionally, "[o]n motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date." *Id.*

Crim. Proc. Art., § 6-103, titled, "**Trial date**" provides, in pertinent part: "[t]he trial date may not be later than 180 days after the earlier of" the appearance of counsel or the first appearance of the defendant before the circuit court. Section 6-103(a). Additionally, "[f]or good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court[.]" Section 6-103(b)(1).

Parker, 347 Md. at 540.

> First, we must ask whether there was good cause for the postponement which occurred on the critical date, and then we must determine if there was inordinate delay between the time of the good cause postponement and the trial date[.]

Id. It is the first-step in the analysis, the court's exercise of its discretion in finding good cause, to which appellant directs our attention.

Appellant's attorney entered his appearance on March 26, 2013, triggering the 180-day Rule. Therefore, the 180-day deadline fell on September 26, 2013. The postponement that took the case past the 180-day deadline occurred on August 6, 2013. On that date, the State requested a postponement, stating that two of its witnesses had failed to appear for trial. The State said, "One, I'm a little worried about, because he's been very ill with kidney issues. I'm afraid he might be in the hospital. So I need some time to confirm that, or get a body attachment. And the other one as well." Defense counsel objected to the postponement, but the administrative court found good cause and granted the postponement.

On appeal, appellant argues that the State's proffer was insufficient and the trial court abused its discretion accepting the proffer and in finding good cause. Citing Md. Rule 8-131(a), the State initially responds that appellant's argument is not preserved for our review because he did not raise it below. At the hearing on appellant's motion to dismiss for the violation of his statutory right to a speedy trials, the court asked defense counsel if she wanted to be heard "on whether there's an issue of abuse of discretion on the part of the

judge[?]" Defense counsel responded, "Um, Your Honor, I wasn't present. . . . So it's very hard to say. . . . I don't know what the nature of the circumstances were at that time." We agree with the State regarding waiver – appellant has waived his statutory speedy trial appellate argument because he put forth no argument below and he did not raise below the argument he now raises on appeal. *Cf. Rosenbach v. State*, 314 Md. 473, 481-82 (1989) (when defendant raises a different argument in support of his speedy trial claim, that argument is not preserved for our review). Even if appellant had preserved his argument for our review, we would have found it without merit.

"A determination by the administrative judge to extend the trial date beyond 180 days is given 'wide discretion' and carries a 'heavy presumption of validity.'" *Fields v. State*, 172 Md. App. 496, 521 (2007) (citation omitted), *rev'd on other grounds*, 432 Md. 650 (2013). "[T]he discretionary decision of the administrative judge as to whether good cause existed is rarely subject to reversal on review." *Id*. (citing *Frazier*, 298 Md. at 451-54. "'The burden of demonstrating a clear abuse of discretion is on the party challenging the discretionary ruling on the postponement.'" *Id*. (quoting *Brown v. State*, 355 Md. 89, 98 (1999)). "Thus, a defendant seeking dismissal on *Hicks* grounds bears 'the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law.'" *Id*. (quoting *Brown*, 355 Md. at 108). It is clear that "a trial judge has the discretion to give credence to a plausible and undisputed proffer by an officer of the court[.]" *Longus v. State*, 416 Md. 433, 460 (2010)(quotation marks and citation omitted).

Here, we find no abuse of discretion by the lower court in relying on the State's unchallenged proffer, especially as it pertained to a scheduling matter. We further note that "[e]xcept in those situations where the unavailability of the witness is caused by the requesting party's culpable or negligent act or omission, the reason for the absence of the witness is immaterial" to a good cause determination. *Farinholt*, 54 Md. App. at 134. Appellant has the burden here. Appellant did not argue below or on appeal that the reason for the State's witnesses failure to appear was due to the State's culpable or negligent act or omission. Under the circumstances presented, we find no abuse of discretion by the motions court in denying appellant's claim that his statutory speedy trial right was violated.

III.

Appellant argues that the trial court abused its discretion when it restricted his cross-examination of the medical examiner when it would not permit him to ask whether a killing by a police officer in the line of duty was also a homicide. The State disagrees, as do we.

On direct examination, the medical examiner testified that the victim's cause of death was due to stab wounds to the chest and the manner of death was homicide. On cross examination the following colloquy occurred:

> [DEFENSE COUNSEL]: Now, when you said you determined this to be a homicide, can you explain to the ladies and gentlemen of the jury what a homicide actually means?
>
> [THE WITNESS]: To a medical examiner, the term homicide means death at the hands or through the actions of another.

[DEFENSE COUNSEL]: So if, um, if a police officer in the line of duty is –

[THE STATE]: Objection, Your Honor.

THE COURT: Sustained.

On redirect, the State asked the examiner to explain the various manners of death. The examiner responded:

> There are five in Maryland. The first we think of is natural. Somebody dies of heart disease. So we have a very fancy name for it, but basically it's someone who dies of a heart attack. So it's a natural death.
>
> The second one is accident, which is an unforeseen event. Motor vehicle collisions . . . [m]ost of them are actually accidents.
>
> Then there is suicide, which is death at one's own hands.
>
> Homicide, which is death at the hands or through the actions of another.
>
> And then there's an undetermined category, where, after a complete investigation and autopsy, the medical examiner cannot separate out whether it was one of the other four manners of death.

After examination, defense counsel approached the bench and stated:

> Your Honor, given what's going on, you know, in society, I understand the reason for the objection, but I think it's a fair question for me to say if a person working in the line of duty kills someone else, that's still going to be a homicide. It's not an accidental death, if it's a justified situation.

The court ruled that the State's earlier objection was "still sustained."

Appellant argues on appeal that he should have been allowed to pose the hypothetical question concerning justified homicide committed by a police officer in the line of duty. He argues that the trial court erred by limiting his cross-examination of the medical examiner

because the jury was left with the mistaken impression that the examiner's conclusion regarding the victim's manner of death as a homicide meant that appellant was criminally culpable. Appellant's argument is meritless.

Md. Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See also Snyder v. State*, 361 Md. 580, 591 (2000)(a trial court will find evidence to be relevant when "its admission increases or decreases the probability of the existence of a material fact."). The Court of Appeals has recognized that the finding of relevance "is generally a low bar[.]" *State v. Simms*, 420 Md. 705, 727 (2011)(citations omitted). Even if evidence is relevant, it may still be excluded however "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." Md. Rule 5-403. It is well-settled that the admission of a hypothetical question lies largely in the discretion of the trial court. *Finke v. State*, 56 Md. App. 450, 501 (1983)(citation omitted), *cert. denied*, 469 U.S. 1043 (1984).

As to the standard of review on appeal, we will "not disturb a trial court's evidentiary ruling absent error or a clear abuse of discretion." *Fontaine v. State*, 134 Md. App. 275, 287-88 (citations omitted), *cert. denied*, 362 Md. 188 (2000). *See also Sifrit v. State*, 383 Md. 116, 128 (2004)("[T]he admission of evidence is committed to the considerable discretion

of the trial court.")(citing *Merzbacher v. State*, 346 Md. 391, 404 (1997)). We have said that an abuse of discretion occurs where "no reasonable person would take the view adopted by the [trial] court." *Fontaine*, 134 Md. App. at 288 (quotation marks and citations omitted) (brackets in original). "Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Id.*

Here, we fail to see how the question posed would have elicited relevant evidence. Additionally, the question posed was both inflaming (there were violent protests in Baltimore at the time of the trial because of Freddie Gray's death while in the custody of law enforcement) and confusing (there was no connection between the victim's death and any police officer). Moreover, on re-direct examination, the State explored the different categories of death besides homicide with the medical examiner. Under the circumstances, we are unpersuaded that the trial court abused its discretion by not allowing the question, or that in doing so, the jury assumed appellant was guilty because the medical examiner testified that the victim died at the hands of another.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.