UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2765

September Term, 2014

REGINALD BELLAMY
A/K/A NEFERKHPER UAENRA-EL

v.

STATE OF MARYLAND

Wright,
Graeff,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 12, 2016

Following a jury trial in the Circuit Court for Baltimore City, Reginald Bellamy, Jr., appellant, was convicted of first-degree rape, first-degree sex offense, attempted first-degree sex offense, second-degree assault, and false imprisonment. He was sentenced to three concurrent life sentences for first-degree rape, first-degree sex offense, and attempted first-degree sex offense, and to a twenty-year consecutive term for false imprisonment. Bellamy appealed, presenting five questions for our review:

1. Did the trial court err by excluding evidence of the victim's mental health diagnosis and medication?

2. Did the trial court err by excluding testimony that a sexually transmitted disease could be responsible for the victim's injuries?

3. Did the trial court err by admitting evidence without a proper chain of custody?

4. Was Mr. Bellamy's right to a speedy trial violated?

5. Should the trial court have merged Mr. Bellamy's conviction for false imprisonment into his conviction for first-degree rape for sentencing purposes?

Finding error only in the circuit court's failure to merge the false imprisonment sentence into the first-degree rape sentence, we shall vacate the sentence for false imprisonment but otherwise affirm.

BACKGROUND

In the early morning hours of October 20, 2004, the female victim, D.C.,[1] was walking on Garrison Boulevard, in Baltimore City, when a man, presenting himself as a

[1] As the parties did in their briefs, we shall refer to the victim by her initials to protect her identity.

police officer, emerged from a vehicle and approached her. The man told D.C. that she was under arrest, pressed his gun on her, and handcuffed her. While D.C. was detained, the man collected her identification and asked her questions before placing her in the backseat of his car, where she waited for five to eight minutes.

The man then drove D.C. to a remote parking lot, where at gunpoint he ordered D.C. to remove her clothes. The man put on a condom, made D.C. perform fellatio, and had vaginal intercourse with her without her consent. He then attempted to have anal intercourse, at which time his condom ruptured, and he ejaculated "on the back of [her] butt going down [her] legs." As D.C. was putting her clothes back on, the man pushed her out of the car, and drove away.

D.C. walked to the home of her cousin, who took her to Bon Secours Hospital. There, D.C. was interviewed by police. She reported that the vehicle driven by her attacker--a black man, standing approximately 6'2" tall, and weighing approximately 180 pounds--had Maryland license plate MGG 435, which police later discovered was registered to Bellamy. D.C. was then transported to Mercy Hospital, where she underwent a medical examination.

The examining nurse observed no injuries to D.C.'s body but did find superficial lacerations in her vaginal and anal areas. The nurse took swabs from D.C's vagina and of a fluid found on the back of D.C.'s right thigh. D.C. informed the nurse that she had had consensual sex on the day prior to the attack. At trial, the examining nurse testified that the injuries observed were consistent with D.C.'s description of events but that they could also have been caused by the previous day's consensual sex. The examining nurse sealed

the swabs and placed them on a rack to dry. She left the swabs in a locked room while transporting D.C. to the emergency room. Upon returning, she placed the swabs in individually labeled envelopes, placed those in a larger envelope, and signed the larger envelope's seal.[2]

Separately, officers executed a search and seizure warrant for Bellamy's DNA, based upon the registration of the license plate reported by the victim. Detective Sarah Connelly, the primary investigator at the time, collected swabs and sealed them in a container.

A serology expert removed the Sexual Assault Forensic Examiners kit from the secured vault and tested it, revealing sperm.[3] The sperm and blood samples were sent to a DNA analyst with Bode Technology Group ("Bode"). Analysis of the vaginal sample revealed a mixture of DNA from D.C. and Roberto Gomez,[4] and the thigh sample contained DNA from Bellamy.

[2] A urine toxicology performed on D.C. also resulted in a positive test for cocaine and opiates.

[3] The State did not offer any evidence as to how Bellamy's swab or the samples taken from D.C. were submitted to the Evidence Control Unit.

[4] There remains some question as to what relationship Roberto Gomez had with D.C. The victim had identified the partner with whom she had had consensual sex the day prior to the rape as "Garcia" but could provide no further information. A colloquy between the court and counsel suggests that the person D.C. identified as Garcia could actually have been Gomez. Regardless, Gomez, a Hispanic male measuring approximately 5'6" and weighing approximately 150 pounds, was never considered a suspect in the case.

In 2012, Bellamy was charged and indicted on multiple counts arising from the incident.[5] At trial, neither party offered any evidence of tampering or mishandling of any of the samples. To the contrary, the signed seals placed at each stage of the process remained intact.

Additional facts will be provided as they become pertinent to this opinion.

DISCUSSION

I.

Evidence of Victim's Mental Health History and Medication

Bellamy first assigns error to the trial court's decision to exclude evidence of the victim's mental health diagnosis and medication. Prior to trial, the State moved to redact reference in the Sexual Assault Forensic Examiners report to portions of D.C.'s medical history related to schizophrenia and bipolar disorder, arguing that the information was irrelevant without further evidence that such disorders could "caus[e] paranoia and could make her lie." Counsel for Bellamy suggested that such information--along with the four prescription drugs that D.C. was using at the time--should be available to it as impeachment evidence. The court granted the State's motion, opining:

> The Maryland Court of Appeals has found that "evidence of a witness's psychiatric history is admissible if it would shed light on the witness's credibility." *Testerman v. State*, 61 Md. App. 257, 268 (1985). A mental illness likely affects credibility if it interferes with a witness['s] memory, skews a witness's ability to observe, or causes the witness to exaggerate.

[5] Although as a result of D.C.'s statements and DNA evidence, Bellamy was identified as a suspect during the course of police investigation shortly after the attack, for unknown reasons the case was closed as a cold case and it was not until August 2010 that the case was assigned to a detective in the cold case unit.

> *Id.* The Defense has not set forth any information regarding the effect of schizophrenia or bipolar disorder on a witness's credibility. In *Testerman*, the Maryland Court of Special Appeals noted that absent additional evidence[,] there is no reason to believe that schizophrenia would affect a witness's credibility. *Id.* Maryland Courts have not addressed the [e]ffect of bipolar disorder on a witness's credibility; however, other states have concluded that absent additional evidence[,] there is no reason to believe that bipolar disorder would affect a witness's credibility or perception of reality. *State v. McGill*, 153 N.H. 813, 817 (2006); *Dowell-El v. Howes,* 2:08-CV-11723 (E.D. Mich. May 14, 2010).

The parties raise the same arguments on appeal as they did before the trial court. Bellamy contends that the disorders or the medications in combination with the illegal drugs in D.C.'s system could somehow have affected her credibility, and the State counters that the evidence was rightly excluded absent something to support such assertions.

We recently summarized our standard of review for evidentiary rulings:

> Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. This Court reviews a trial court's evidentiary rulings for abuse of discretion. A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.

Donati v. State, 215 Md. App. 686, 708-09, *cert. denied*, 438 Md. 143 (2014) (internal quotation marks, citations, and alterations omitted).

For a victim's psychiatric history to be admissible, "[t]he particular disorder must be one that would have affected the witness's credibility such as memory, observation and exaggeration." *Testerman v. State*, 61 Md. App. 257, 268 (1985). This is so because "[l]ike bad acts, not every disorder is relevant to a witness's credibility." *Reese v. State*, 54 Md. App. 281, 290 (1983). In *Testerman*, we expressly rejected the introduction of a

victim's schizophrenia diagnosis to attack her credibility when--as here--"no further medical explanation was ever solicited" and "[t]here was no evidence to show that this type of mental disorder, schizophrenia, was one that would affect the victim's credibility." 61 Md. App. at 268. As the trial court observed, Bellamy did not "set forth any information regarding the effect of schizophrenia or bipolar disorder on a witness's credibility." Bellamy points us to no cases in Maryland or any other jurisdiction in support of the notion that schizophrenia or bipolar disorder would affect a witness's credibility. For these reasons, the trial court did not err in excluding evidence of D.C.'s psychiatric history.

Neither has Bellamy provided any support for the proposition that the victim's prescription drug use affected her credibility, aside from a bald assertion that "[w]e don't know how [testing positive for cocaine and opiates] could have reacted with the medication." The very nature of this conjecture without any medical evidence in support fails for the same reasons that evidence of the victim's psychiatric diagnoses was rightly excluded. For this evidence to be relevant and admissible, Bellamy would have needed to present medical support for the proposition that these drugs--either in isolation or in tandem with the illegal drugs D.C. had in her system--are of the type "that would have affected the witness's credibility such as memory, observation and exaggeration." *Testerman*, 61 Md. App. at 268.

Bellamy's reliance upon *Reese v. State*--the sole case to which he points for support--is misplaced. In that case, we reversed the circuit court's exclusion of evidence

of a witness's psychiatric history. *Reese*, 54 Md. App. at 289-90. But we specifically highlighted the important role of medical testimony in that case:

> The key that should have caused the court to open the door to inquiry was that submitted by its Medical Administrator who not only outlined the lengthy psychiatric history of the witness, but noted from the record that Majors was a person with "a mixed emotional disturbance and borderline personality" which the Administrator explained as one
>
> > "who experiences from time to time under stress episodes of psychosis or losing touch with reality and comes back into reality fairly easily."
>
> Whether that definition was applicable to the witness--victim, the Medical Administrator did not know specifically, but
>
> > "in stress someone with that diagnosis could tend to become psychotic and out of touch with reality.["]

Id. at 290. This is exactly the type of testimony contemplated in *Testerman* and the trial court in this case. Absent such evidence suggesting that a diagnosis or medication would affect a witness's credibility, it was not an abuse of discretion to exclude the evidence.

II.

Evidence of Victim's Sexually Transmitted Disease

Bellamy also contends that the trial court erred in excluding evidence of D.C.'s diagnosis of trichomoniasis, a sexually transmitted disease. Prior to trial, the State moved that evidence of the diagnosis, which appeared in the Sexual Assault Forensic Examiners report, be redacted pursuant to Maryland's Rape Shield Law.[6] Bellamy argued that he

[6] Md. Code (2002, 2012 Repl. Vol.) § 3-319 of the Criminal Law Article provides, in pertinent part:

(continued…)

should have been permitted to introduce this evidence as a possible source of the superficial lacerations discovered during D.C.'s medical examination. Bellamy stipulated, however, that the evidence would be unnecessary if trial testimony from the examining nurse suggested that tears from both the vaginal and anal area could have been caused by the consensual sexual intercourse the day preceding the attack:

> THE COURT: Could you not just cross examine the nurse and say if a person had consensual sex the night before, could those tears have occurred, without getting into this STD?

(a) Evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted in prosecution for:
  (1) a crime specified under this subtitle or a lesser included crime;
  (2) the sexual abuse of a minor under § 3-602 of this title or a lesser included crime; or
  (3) the sexual abuse of a vulnerable adult under § 3-604 of this title or a lesser included crime.

(b) Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:
  (1) the evidence is relevant;
  (2) the evidence is material to a fact in issue in the case;
  (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
  (4) the evidence:
    (i) is of the victim's past sexual conduct with the defendant;
    (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
    (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
    (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

[DEFENSE COUNSEL]: Well, right, but I think that then she would say that there are also tears around the anal.

THE COURT: Right. But sometimes, you know.

[DEFENSE COUNSEL]: Right. I don't know. Again, I don't know what she's going to say.

THE COURT: Because you're--right.

[DEFENSE COUNSEL]: I am happy to steer clear. If she says, yes, the tears around the anal and vaginal area could have occurred from consensual sex--

THE COURT: Right.

[DEFENSE COUNSEL]: --then I don't think we need to go into it and I will not go into it.

* * *

I'm just saying, if the SAFE nurse says well, vaginally, however, I don't believe anally that those tears would be there and that's consistent with rape based on the victim's statement that there was attempted anal intercourse, then that's where I'm saying--

THE COURT: Because your main argument and the reason why you're not conceding that this STD information should come in is other reasons why she could have suffered tears?

[DEFENSE COUNSEL]: Correct.

THE COURT: Okay. So if cross examination of SAFE nurse would do it, then there's no reason for this STD information--

[DEFENSE COUNSEL]: No.

The trial court granted the State's motion to exclude the evidence, reasoning:

The fact that the Victim has a Sexually Transmitted Disease (STD) is not particularly relevant because there is no close connection between the evidence and the purpose for which it is being offered. The information is

> not material because there are other ways to explain the tears in the victim's anus and vagina without noting that she has a disease. Furthermore, the probative value is outweighed by the prejudice of publishing this information to the jury. The probative value of evidence is outweighed when there is the possibility of embarrassment to or harassment of the witness and the possibility of undue delay or confusion of the issues. *Churchfield v. State*, 137 Md. App. 668, 687 (2001). Sexually transmitted diseases are accompanied by significant social stigma. Thus, this court will not admit evidence relating to the victim's STD because any probative value is outweighed by the possibility of embarrassment or confusion of the issues.

During the State's direct examination, the examining nurse testified that she discovered superficial lacerations in both D.C.'s vaginal and anal areas. She further testified about the possible sources of those injuries:

> THE STATE: Let's talk about the injuries you observed to her genitalia. Based on your knowledge, training and experience, are they consistent with what she described happened to her?
>
> [NURSE]: Yes, they are.
>
> THE STATE: Is it possible that they could have been caused by the--her consensual sex the day before?
>
> [NURSE]: It's possible.

Defense counsel revisited the subject during its cross examination:

> [DEFENSE COUNSEL]: And you stated that because she had--she stated that she had consensual sex the night before, both the--what you say are multiple, superficial lacerations to the anus and to the vagina could have been caused by her consensual sex the night before; correct?
>
> [NURSE]: Yes, they could have.

Bellamy's own expert witness also testified as to the possible source of the injuries:[7]

> [DEFENSE COUNSEL]: And after reviewing the medical records and the photographs, did you come up with an opinion as to the injuries of [D.C.]?
>
> [DEFENSE EXPERT]: Yes, I did.
>
> [DEFENSE COUNSEL]: And what was that?
>
> [DEFENSE EXPERT]: The opinion, they--there were some injuries to an area called the fossa navicularis [vagina area]. I did not see any of the injuries to the posterior fourchette [anal area] that was documented. And my opinion one those injuries that it could be caused by some type of penetration or some other factors.
>
> [DEFENSE COUNSEL]: And when you refer to the injuries of the--I am not going to be able to say it--of [D.C.'s] vaginal area, is that what you're referring to?
>
> [DEFENSE EXPERT]: To an area just outside the vagina called the fossa navicularis.
>
> [DEFENSE COUNSEL]: Okay. And did you also see that [D.C.] had had consensual sex the night before?
>
> [DEFENSE EXPERT]: Yes, I did.
>
> [DEFENSE COUNSEL]: And could that consensual sex the night before have been--what was your opinion when you saw that?
>
> [DEFENSE EXPERT]: My opinion is that based on the location of the injury I can't say whether it was from consensual or non-consensual intercourse.
>
> [DEFENSE COUNSEL]: So it could have been caused by consensual sex; correct?

[7] Immediately before questioning Bellamy's expert witness, his counsel renewed his motion to ask the witness if the injuries could have been sustained by D.C.'s trichomoniasis diagnosis. The court denied the motion.

[DEFENSE EXPERT]: The day before, correct.

[DEFENSE COUNSEL]: And as to the superficial lacerations to the anal area . . .

* * *

. . . could that also have been caused by consensual sex the night before?

[DEFENSE EXPERT]: It could, yes.

As with the first issue raised in this appeal, we "revie[w] a trial court's evidentiary rulings for abuse of discretion[, which occurs] when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." *Donati*, 215 Md. App. at 708-09 (internal quotation marks, citations, and alterations omitted). As a general rule, "all relevant evidence is admissible," and "[e]vidence that is not relevant is not admissible." Md. Rule 5-402. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403.

The issue at hand is whether the probative value of the suppressed testimony regarding a possible alternate cause of the victim's injuries outweighed the prejudice of the jury discovering the victim had been diagnosed with a sexually transmitted disease. Probative value "is the tendency of the evidence to establish the proposition for which it is offered to prove." *Clark v. State*, 97 Md. App. 381, 396 (1993) (citations omitted). "The stronger the connection between the evidence and the proposition--the greater the tendency of proof--the more probative the evidence is." *Johnson v. State*, 332 Md. 456, 474 (1993).

Here, the suppressed evidence would have been offered to prove that the injuries could have arisen from a source other than the alleged rape. The problem with Bellamy's position--as highlighted by the trial court--is that the evidence of consensual sex on the night preceding the attack drastically reduced the probative value of the evidence of the trichomoniasis. In other words, that multiple witnesses had already suggested that the tears could have arisen from a cause other than non-consensual sex greatly reduces the tendency of proof of the trichomoniasis diagnosis. When balanced against the prejudice of embarrassing the victim and distracting the jury--the trial court observed that "[s]exually transmitted diseases are accompanied by significant social stigma"--we are persuaded that the trial court did not abuse its discretion in excluding evidence of the sexually transmitted disease.

III.

Chain of Custody

Bellamy attacks as insufficient the State's chain of custody for the evidence obtained from the rape kit and Bellamy's DNA sample. He contends that because there was no testimony regarding how the Sexual Assault Forensic Examiners kit was transported from the hospital to the evidence control unit, the chain of custody was broken. Likewise, he argues that a similar breakdown occurred regarding his DNA because the State offered no testimony regarding its whereabouts during the time between its collection and its placement in the evidence control unit. The State relies upon the decision of the Court of Appeals in *Cooper v. State*, 434 Md. 209 (2013), *cert. denied,*

134 S. Ct. 2723 (2014), for support that the contested evidence was properly admitted because there was no suggestion that tampering occurred.

In *Cooper*, the Court of Appeals addressed a challenge to the chain of custody in a rape case when a key aspect of the State's case was "a match . . . between Cooper's DNA and the DNA found in the biological material on a napkin into which the victim testified she spit her attacker's semen." *Id.* at 213-14. In that case, the defendant, Cooper, argued that the State failed to establish chain of custody between Baltimore City Police forensics lab and the Bode testing lab. *Id.* at 227. The Court of Appeals summarized Maryland's jurisprudence regarding chain of custody issues:

> When determining whether a proper chain of custody has been established courts examine whether there is a "reasonable probability that no tampering occurred." *Breeding v. State*, 220 Md. 193, 199 (1959). As the Court of Special Appeals has noted in *Wagner v. State*, 160 Md. App. 531 (2005), "[t]he circumstances surrounding [an item of evidence's] safekeeping in that condition [that is substantially the same as when it was seized] in the interim need only be proven as a reasonable probability[,] and in most instances is established by responsible parties who can negate a possibility of tampering and thus preclude a likelihood that the thing's condition was changed." 160 Md. App. at 552 (quotation omitted).

Id. at 227-28. The Court examined the chain of custody and determined it was "unlikely that tampering undermined the integrity of the napkin, [and] conclude[d] that the State ha[d] provided sufficient testimony to establish the chain of custody as to the napkin." *Id.* at 228.

From the testimony elicited at Bellamy's trial, there is little doubt of a "reasonable probability" that no tampering occurred here. Regarding evidence obtained during the examination of D.C. at Mercy Hospital, the examining nurse testified and identified the

evidence collection envelope bearing the case number and her signature on the signed and taped seal. The serologist with the Baltimore City Police Department who worked on the case testified and also identified the evidence collection envelope bearing the case number and his initials on the signed and taped seal. He also testified that the evidence did not appear to be tampered with when he first received it for testing. The DNA analyst from Bode, who performed further analysis, also testified that the envelope arrived intact and with no visible signs of tampering. Regarding the oral swab obtained from Bellamy, one of two detectives who was present during the seizure testified that proper procedure was followed and the swab was "immediately sealed back in the container," "signed by the individual that . . . the swabs came from," and "sealed in one complete package." Although the testifying detective was not the individual who delivered the evidence to the evidence control unit, the DNA analyst, who analyzed the sample obtained from Bellamy and compared it to the DNA profile obtained during D.C.'s examination and prepared by Bode, testified that the seal of the evidence collection envelope containing the swab obtained from Bellamy was not broken or tampered with when she received it.

That the State did not present the testimony of the detective, who physically transported the samples taken from both D.C. and Bellamy, is insignificant in the face of the extensive testimony from every person involved at each stage of the evidence collection process that the evidence was not tampered with. The facts of this case present a "reasonable probability that no tampering occurred" such that the trial court did not err in admitting the DNA evidence. *Cooper*, 434 Md. at 227 (citation omitted).

IV.

Speedy Trial

Bellamy contends that the lengthy delay prior to his trial--over two years after his indictment--violated his Sixth Amendment guarantee to "a speedy and public trial." U.S. Const. amend. VI. Bellamy was first charged on July 26, 2012, indicted on August 28, 2012, and arraigned on November 9, 2012. Over the course of two years, his trial was postponed eight times:

> 1. **January 14, 2013 (four months after indictment):** Trial postponed for good cause upon State's request due to incomplete DNA analysis.
>
> 2. **March 12, 2013 (two months later):** Trial postponed for good cause upon State's request due to incomplete DNA analysis.
>
> 3. **May 22, 2013 (two months later):** Trial postponed for good cause upon mutual request due to incomplete DNA analysis and defense counsel's unavailability. [8]
>
> 4. **August 8, 2013 (two months later):** Trial postponed for good cause upon mutual request due to unavailability of counsel for both the defendant and the State.[9]
>
> 5. **October 17, 2013 (two months later):** Trial postponed for good cause upon defense counsel's request because Bellamy's prior attorney had left the Office of the Public Defender and the newly assigned attorney was not prepared to proceed.[10]

[8] In addition to the DNA still being incomplete, Bellamy's attorney was unavailable for the May 22, 2013 hearing. Although no objection was made to the March 12th postponement, Bellamy personally objected to the May 22nd delay.

[9] Bellamy personally moved to dismiss, and the court held the motion *sub curia* pending further argument from Bellamy's counsel.

[10] The court again noted Bellamy's renewed objection.

> 6. **January 16, 2014 (three months later):** Trial postponed for good cause upon defense counsel's request due to counsel's unavailability that day and her need for further preparation. [11]
>
> 7. **March 28, 2014 (two months later):** Trial postponed for good cause--again over Bellamy's objections--upon defense counsel's request to permit further evaluation of Bellamy's competency.
>
> 8. **June 2, 2014 (two months later):** Trial postponed for good cause upon defense counsel's request because it had only recently retained a DNA expert.
>
> Pretrial motions, jury selection, and trial commenced on September 24, 2014.

Bellamy renewed his motion to dismiss--both his oral motion and the written motion filed by his counsel--during consideration of pre-trial motions. He argued that the motion should be granted for three reasons: (1) the length of the delay prejudiced him because he had been incarcerated and unable to assist in his own defense; (2) the reasons for the delay were not due to Bellamy himself, but were due in part to the State's DNA analysis and the change in Public Defender; and (3) Bellamy continually reasserted his right to a speedy trial at each hearing. The State countered that a majority of the delay was requested by defense counsel and not by the State, and that Bellamy had not cited any specific prejudice Bellamy had suffered because of the delay.

The court denied the motion to dismiss, reasoning:

> When determining whether a Defendant's speedy trial rights are violated, Maryland courts employ "a balancing test in which the conduct of both the prosecution and the defendant are weighed." *Epps v. State*, 276 Md. 96, 105 (1975). Courts consider four factors (a) length of delay, (b) the reason

[11] The attorney who stood in for Bellamy's counsel stated that additional time was needed for a competency evaluation of Bellamy, further analysis by defense's DNA expert, and to investigate an internal affairs complaint against one of the officers involved in the case. Bellamy renewed his objections.

> for the delay, (c) the defendant's assertion of his right and (d) prejudice to the defendant. Neither party in this case disputes that there has been a significant length of delay or that [Bellamy] has not asserted his right to a speedy trial.
>
> * * *
>
> The Defense argues that the case should be dismissed because the defendant has been waiting for a trial since January 13, 2013. The Defense is responsible for the majority of the delay.
>
> * * *
>
> The State is responsible for approximately four months of the delay. The Defense is responsible for approximately 11 months of the delay. Although the defendant has been in jail without the opportunity for bail, there is no evidence that he was a victim of oppressive pretrial incarceration, he has not alleged severe anxiety while waiting for trial, and there is no evidence that the defense has been impaired or that witnesses have disappeared as a result of the delay. For those reasons this court will deny the Defense's request for dismissal on the grounds of a violation of the right to speedy trial.

We recently discussed an appellate court's role in assessing a defendant's assertion of a violation of his speedy trial guarantee:

> A criminal defendant is guaranteed the right to a speedy trial under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Divver v. State*, 356 Md. 379, 387-88 (1999). We review a motion to dismiss based on the purported lack of a speedy trial by making "our own independent constitutional analysis." *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 (citations omitted). And as we explained in *Brown v. State*, 153 Md. App. 544 (2003), "the review of a speedy trial motion should be 'practical, not illusionary, realistic, not theoretical, and tightly prescribed, not reaching beyond the peculiar facts of the particular case.'" *Id.* at 556 (citation omitted).
>
> The Supreme Court established the standard for speedy trial issues in *Barker v. Wingo*, 407 U.S. 514 (1972). The Court rejected the notion that a

> speedy trial can be measured against a rigid or mechanical deadline, holding instead that courts should apply "a balancing test, in which the conduct of both the prosecution and the defendant are weighed." *Id.* at 530; *State v. Kanneh*, 403 Md. 678, 687-88 (2008). The Court identified four factors for us to balance: the "'length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" *Kanneh*, 403 Md. at 688 (quoting *Barker*, 407 U.S. at 530).

Butler v. State, 214 Md. App. 635, 655-56 (2013), *overruled on other grounds by Nalls v. State*, 437 Md. 674 (2014). We will assess each factor in turn.

Length of Delay

The State concedes that Bellamy's delay of nearly two years is presumptively prejudicial, thus triggering analysis of the *Barker* factors. We have observed, however, that the mere length of delay does not typically tip the balance of the scales:

> As one of the four factors on the ultimate merits, it is heavily influenced by the other three factors, particularly that of "reasons for the delay." It may gain weight or it may lose weight because of circumstances that have nothing to do with the mere ticking of the clock.

Id. at 657 (citation omitted).

Bellamy's delay was far shorter than the five-year delay in *Barker*, which the Supreme Court found not to have constituted a speedy-- trial delay and "falls into the same range as delays we have found in other cases not to violate the defendant's speedy trial rights." *Id.* at 657-58 (27 month delay) (citing *Wheeler v. State,* 88 Md. App. 512, 517-26 (1991) (twenty-three month delay not a violation), and *Marks v. State,* 84 Md. App. 269, 281-86 (1990) (twenty-two month delay not a violation)).

Reasons for Delay

Bellamy's trial was delayed eight times, each in the order of two to four months. Even viewed most liberally in favor of Bellamy, only two of the delays--totaling approximately four months--would be fully charged to the State. Two of the delays were caused by mutual request--totaling four months--and the remaining four delays--constituting eleven months--were upon the request of defense counsel. A majority of the delay was entirely due to defense counsel, and of the nearly 25-month delay, a full 21 months of delay were at least partially due to defense counsel. Although Bellamy argues that he was "not at fault for his attorney leaving the Office of the Public Defender," he points us to no case to support his argument that "the months of delay caused by his attorney being changed against his will should not be counted against him." This factor does not weigh heavily in favor of Bellamy.

Assertion of Right

Bellamy undoubtedly asserted his right to a speedy trial. In addition to including the request for a speedy trial in an omnibus motion, he personally raised the issue at pretrial hearings when given the opportunity, and his counsel filed a separate motion to that effect. Indeed, the force with which the objections were made weighs in Bellamy's favor.

Prejudice to Bellamy

In assessing the balance of the four factors, we "have stressed the importance of the prejudice prong." *Fields v. State*, 172 Md. App. 496, 545 (2007) (citation omitted). The Supreme Court has identified three interests the speedy trial right is 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 at 532 (footnote omitted). "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." *Id.* Bellamy latches on to this interest, stressing that the delay "had severely prejudiced him by preventing him from contacting witnesses." But neither before the trial court, nor before us, has Bellamy identified one witness who was unavailable due to the delay or pointed to any other substantial hindrance the delay posed to his defense. Indeed, he has provided no support for his alleged prejudice other than vague statements implicating these interests. "In view of the complexity and gravity of the case, we accord great weight to the lack of any significant prejudice resulting from the delay." *Wilson v. State*, 148 Md. App. 601, 639 (2002).

Balancing the Factors

On balance, we conclude that Bellamy has failed to show his speedy trial right was violated. Although the length of his trial delay was substantial, (1) the length of delay is rarely sufficient in and of itself to constitute a violation, and (2) most of the delay here is not attributable to the State or the courts. And although Bellamy repeatedly reasserted his right throughout the pretrial proceedings, he failed at any juncture to point to any real prejudice he has suffered. As a result, the trial court did not err in denying his motion.

V.

Merger of Sentences

Bellamy's final assigned error relates to his ultimate sentence. He contends that the trial court ought to have merged his conviction for false imprisonment into his conviction for first-degree rape for sentencing purposes. He compares this case to *Brooks v. State*, 439 Md. 698 (2014), and argues that "[b]ecause this Court cannot determine that the rape and false imprisonment convictions were not based on the same act, it must remand the case to the circuit court to merge" the two sentences. The State counters that the evidence presented of false imprisonment in this case was distinct from the evidence of rape, pointing specifically to the time when D.C. was handcuffed on the street and made to wait in the backseat of a vehicle for a period of time prior to being transported to the location where she was raped.

The Court of Appeals recently summarized merger law and its specific application to the crimes of first-degree rape and false imprisonment:

> The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law. *Nicolas v. State,* 426 Md. 385, 400 (2012). Merger protects a convicted defendant from multiple punishments for the same offense. *Id.* Sentences for two convictions must be merged when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other. *Id.* at 400-02; *State v. Lancaster,* 332 Md. 385, 391 (1993).
>
> The Court of Special Appeals had occasion to consider whether a false imprisonment conviction merges into a rape conviction in *Hawkins v. State,* 34 Md. App. 82, 92 (1976). In that case, the defendant approached the victim in a wooded area, seized her by the throat, held a gun to her side, ordered her to undress and lie on the ground, and raped her. The court

> noted that the victim was detained only for the time necessary to complete the rape. Because "[a]ll of the facts necessary to prove the lesser offense were essential to proving the greater one," the court held that the defendant's conviction for false imprisonment merged into the rape conviction. *Id.* The court reasoned that "[t]o hold otherwise would be to hold that in every case of rape, a conviction for false imprisonment would also be proper," but noted that "confinement after or before the rape is committed would preclude the merger." *Id.*
>
> As the Circuit Court's instructions in the instant case also demonstrate, the facts necessary to prove a rape also prove false imprisonment for the period of the rape. In particular, in order to prove false imprisonment, the prosecution must prove the following three elements, each of which is also an element of a first degree rape conviction:
>
> > (1) that the defendant confined or detained the victim; *as Hawkins indicated, confinement or detention of the victim is necessarily part of the proof of a rape*
> > (2) that the victim was confined or detained against the victim's will; *a rape involves sexual intercourse without the victim's consent--i.e., against the victim's will*
> > (3) the confinement or detention was accomplished by force or threat of force; *forcible second degree rape involves the use of force or threat of force*
>
> Thus, if the jury convicted [a defendant] of false imprisonment for confinement *coincident with the rape,* the convictions merge for sentencing purposes.

Brooks, 439 Md. at 737-38 (internal footnotes omitted) (emphasis in original).

A brief discussion of the recent decision of the Court of Appeals in *Brooks* is appropriate both for its factual similarities to this case and because both parties rely upon it in their briefs. In *Brooks*, the victim awoke from a nap to find a man "standing beside her bed with his pants on the floor demanding sex." *Id.* at 703. After a struggle in which the man beat and choked the victim, she told him that she would submit to his demands if he ceased attacking her. *Id.* at 704. The victim "went to the living room, drank some

water, and smoked a cigarette" before the man forced her to have sexual intercourse with him in her bedroom. *Id.* When she requested a "break," the man permitted her to walk about the house but followed her like a "shadow." *Id.* The victim was eventually able to call police and flee the home. *Id.*

The trial court did not merge the offenses of first-degree rape and false imprisonment for sentencing purposes. *Id.* at 737. The Court of Appeals held that merger was required. The Court observed that although the false imprisonment conviction "could have reasonably been based on [the man's] actions separate from the rape itself, it is not readily apparent whether the jury actually came to that conclusion." *Id.* at 739. In light of this ambiguity, the Court reasoned, it was "constrained by precedent from assuming that the two convictions were not based on the same act or acts." *Id.* "In particular, when the factual basis for a jury's verdict is not readily apparent, the court resolves factual ambiguities in the defendant's favor and merges the convictions if those convictions also satisfy the required evidence test." *Id.* (citations omitted). In attempting to resolve the ambiguity, the Court "look[ed] to the record for other indications that might resolve the ambiguity in favor of non-merger," specifically the jury instructions and State's closing arguments, but found no further clarity. *Id.* at 741-42.

As in *Brooks*, "[t]he critical question as to merger in this case is . . . whether the rape conviction and the false imprisonment conviction are based on the 'same act or acts.'" *Id.* at 738-39. The court's instructions to the jury do not suggest that the jury necessarily viewed the convictions as arising from distinct acts. Nor did the State clearly

articulate a theory of false imprisonment distinct from the first-degree rape during its closing argument. Although the jury certainly could have premised a false imprisonment conviction on D.C.'s brief detention against her will outside the vehicle and then again in the backseat--all prior to being transported to the location where the rape occurred--there is no indication in the record that the jury made that finding. Thus, because the two convictions satisfy the required evidence test and the factual basis of the jury's verdict is not readily apparent, we will resolve the ambiguity in Bellamy's favor and merge the convictions for sentencing purposes. *See id.* at 739.

SENTENCE FOR FALSE IMPRISONMENT VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE ALLOCATED: 4/5 TO APPELLANT, 1/5 TO THE MAYOR AND CITY COUNCIL OF BALTIMORE.