Circuit Court for Prince George's County
Case No. 150134B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 148

September Term, 2016

DANA DIXON

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 7, 2017

On November 30, 2015, a jury in the Circuit Court for Prince George's County convicted Dana Dixon, appellant, of possession of a regulated firearm after being convicted of a crime of violence, possession of a shotgun after being convicted of a crime of violence, and possession of a regulated firearm by a prohibited person previously convicted of a disqualifying crime. The court sentenced appellant to 15 years, all but 10 years suspended, for the conviction of possession of a regulated firearm after being convicted of a crime of violence. It merged the other two counts for sentencing purposes.

On appeal, appellant presents three questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in denying appellant's motion to dismiss on speedy trial grounds?
2. Was the evidence insufficient to sustain appellant's convictions?
3. Did the circuit court abuse its discretion in allowing an officer to testify about appellant's birthdate, when the officer had no personal knowledge of that fact?

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

FACTUAL AND PROCEDURAL BACKGROUND

On November 17, 2014, at approximately 1:00 a.m., Officer Jason Norman, a member of the Prince George's County Police Department, ran a registration check on a Dodge Avenger that he observed travelling on Riggs Road in Hyattsville, Maryland. The check revealed that the vehicle's registration was suspended for an emissions violation, so Officer Norman proceeded to conduct a traffic stop.

Officer Norman testified that Tyreka Beltre was driving the vehicle, and appellant was sitting in the passenger seat. When Officer Norman approached the vehicle and asked Ms. Beltre for her driver's license, he smelled an odor of marijuana emanating from the vehicle. He asked Ms. Beltre if there was "anything illegal in the vehicle and any marijuana or any other drugs." Ms. Beltre informed Officer Norman that there was a marijuana pipe in the center console.

At that point, Officer Norman removed appellant and Ms. Beltre from the car and conducted a search of the vehicle's interior. He recovered a marijuana pipe from the center console. He also discovered a loaded sawed-off shotgun underneath the driver's seat.

Officer Norman asked appellant and Ms. Beltre who owned the shotgun. Neither person responded, so Officer Norman told another officer to place both of them under arrest. At that point, appellant stated that it was his gun, and Ms. Beltre did not have anything to do with it.

During the encounter, Officer Conor Crowley, also a member of the Prince George's County Police Department, asked appellant "for his information to help speed up the process." Appellant told him that his name was "Dana Dixon," "he had no middle name," and "his birthdate was 5-15-1993," a date that appellant confirmed multiple times. Appellant also gave Officer Crowley his parents' address and a telephone number, which the officer wrote in his statement, along with the other information. Officer Crowley testified that, when he looked up appellant's name, "it didn't come up with a birthdate with that name," and he was never able to "confirm what [appellant's] birthdate was."

Officer Norman subsequently drafted the charging documents. He testified that, during that process, he had to investigate and gather appellant's "booking information," including his date of birth, which he testified was "5-5-1990."

Officer Norman also had the shotgun test-fired to determine whether it was functional. He personally witnessed the test, and he testified that the shotgun fired properly.[1]

Additional facts will be discussed, as necessary, in the discussion that follows.

DISCUSSION

I.

Speedy Trial

Appellant first argues that the circuit court erred in denying his motion to dismiss, asserting that the prosecution violated his right to a speedy trial. The State disagrees and argues that the circuit court "correctly denied [appellant's] motion to dismiss the case against him for a violation of his constitutional right to a speedy trial." Initially, it contends that the total length of the delay was not of constitutional dimension because it fell below the one year and fourteen day benchmark set forth in *Glover v. State*, 368 Md. 211, 223 (2002). In any event, the State argues that, even if this case warrants a full speedy trial analysis, appellant's claim fails because the "reasons for the delay were innocuous," he "failed to frequently and forcefully demand a speedy trial," and he "failed to show actual prejudice emanating from the pre-trial delay in his case."

[1] At trial, the State admitted a document certifying the shotgun's functionality.

"When reviewing a circuit court's judgment on a motion to dismiss claiming deprivation of the right to a speedy trial, 'we make our own independent constitutional analysis.'" *Randall v. State*, 223 Md. App. 519, 538 (2015) (quoting *Glover*, 368 Md. at 220). "'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.* (quoting *Glover*, 368 at 221).

Speedy trial claims are analyzed pursuant to the four-factor test set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Prior to conducting this four-factor analysis, however, a court must determine whether the length of delay is of such constitutional dimension as to trigger the more in-depth analysis. *State v. Kanneh*, 403 Md. 678, 687-88 (2008); *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. *Epps v. State*, 276 Md. 96, 109 (1975); *Divver v. State*, 356 Md. 379, 388-89 (1999). 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.

Once it has been determined that the delay is of constitutional dimension, the court weighs the following four factors of a balancing test to determine if an accused was denied a speedy trial: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530. "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." *Divver*, 356 Md. at 394 (citations and quotations omitted).

Here, the parties agree, and the record confirms, that appellant was arrested on November 17, 2014, and his trial commenced on November 23, 2015. Therefore, the total delay in this case was one year and six days.

Although the Court of Appeals in *Glover* stated that a delay greater than one year and fourteen days is "presumptively unreasonable," the Court also made clear that "the delay that can be tolerated is dependent, at least to some degree, on the crime for which the defendant has been indicted." 368 Md. at 224. Therefore, "the delay that can be tolerated for an ordinary street crime is considerably less than a serious, complex conspiracy charge." *Id.* (quoting *Barker*, 407 U.S. at 531).

In *Lloyd v. State*, 207 Md. App. 322, 325, 329 (2012), *cert. denied*, 430 Md. 12 (2013), a case involving a second degree assault, this Court calculated a total delay of eight months and fifteen days between the defendant's arrest and his trial. We noted that this delay was "below the presumptively prejudicial one year and fourteen day mark," but it was two months more than "several cases holding that a six-month delay was not presumptively prejudicial." *Id.* at 329. We held that "this delay 'might' be construed as presumptively prejudicial and of constitutional dimension," and therefore, we conducted a full speedy trial analysis. *Id.*; *see also Barker*, 407 U.S. at 528 ("[A] total [delay] of nine months . . . may be wholly unreasonable under the circumstances."); *Doggett v. United*

States, 505 U.S. 647, 652 n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); *State v. Ruben*, 127 Md. App. 430, 440 ("[D]elay of nearly 11 months from arrest to trial was of constitutional dimension, albeit barely so."), *cert. denied*, 356 Md. 496 (1999); *Icgoren v. State*, 103 Md. App. 407, 423 (delay of eleven months and thirteen days was presumptively of constitutional dimension, "though barely so."), *cert. denied*, 339 Md. 167 (1995); *Carter v. State*, 77 Md. App. 462, 466 (1988) ("[U]nder the circumstances of this case a seven-month, twenty-five day delay . . . is presumptively prejudicial. The case [which] involve[ed] credit card misuse, was conceptually and factually uncomplicated.").

The circumstances of this case are relatively simple, i.e., the possession of a shotgun that was discovered during a traffic stop. Moreover, there were multiple police witnesses who heard appellant's admission that he was the owner of the shotgun. And although, as the State notes, the delay in this case does not meet the one year and fourteen day benchmark discussed in *Glover*, it was only nine days shy of that threshold. Under these circumstances, we conclude that the delay in this case is of constitutional dimension warranting a full speedy trial analysis.

A.

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 one

year and six days. 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*, 223 Md. App. at 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, *inter alia*, jury and court-related delays, discussed *infra*. Under these circumstances, the length of delay weighs against the State, but only slightly.

B.

Reason for the 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.

1.

Delay between November 17, 2014, and May 14, 2015

Appellant argues that the "first two postponements (on April 24, 2015, and May 8, 2015) resulted because the State failed to provide timely discovery," and therefore, they should weigh against the State. The State argues that these delays should not weigh against it because the "entire period of time between [appellant's] arrest and his first scheduled trial date . . . is not attributable to the State" since that initial period is "necessary for the orderly administration of justice." In any event, the State argues that, even if the time was

attributable to the State, the reason for these two delays was "to enable the State to comply with its discovery obligations," and therefore, "they should be weighed lightly."

As the State correctly notes, the initial period between arrest and the first scheduled trial date generally is accorded neutral status. *See Henry v. State*, 204 Md. App. 509, 551 (2012) ("[T]he initial delay from the . . . charging [and arrest] date to the . . . initial trial date . . . should be accorded neutral status, and will not be charged to the State."); *Howell v. State*, 87 Md. App. 57, 82 ("The span of time from charging [or arrest] to the first scheduled trial date is necessary for the orderly administration of justice, and is accorded neutral status."), *cert. denied*, 324 Md. 324 (1991).

Initially, we note that April 24, 2015, was the original date for the *motions* hearing, not trial. The parties appeared before the circuit court on that date and agreed to postpone the motions hearing to May 8, 2015. Appellant provides no argument how the postponement of the motions hearing delayed his trial, and therefore, that postponement does not factor into our analysis.

With respect to the period between appellant's arrest and his first trial date, it appears that the parties disagree as to the first date on which trial was scheduled to occur. Appellant suggests that the circuit court initially scheduled trial for May 8, 2015. The State contends that the first trial date was set for July 16, 2015. The record, however, indicates that the initial trial date actually was May 14, 2015.[2] Therefore, we accord neutral status

[2] The record includes a notice issued by the Circuit Court for Prince George's County, Office of Calendar Management, filed on March 20, 2015, noting (continued . . .)

to the initial pre-trial period between November 17, 2014, the date of appellant's arrest, and May 14, 2015, the first scheduled trial date.

2.

Delay between May 14, 2015, and July 16, 2015

On May 8, 2015, the parties appeared before the circuit court and requested that the trial be postponed. The State explained that it intended to consolidate this case with the case involving Ms. Beltre, but it had not yet filed a motion to request consolidation. It also informed the court that there was additional discovery that had not yet been turned over to the defense. Defense counsel stated that he "would have to move [the trial date] regardless, because [he was] on mandatory training." The court granted the parties' requests and reset the trial for July 16, 2015.

Appellant argues that this period should weigh against the State because it "failed to provide timely discovery." The State argues that, assuming *arguendo*, this delay is chargeable to the State, it should be "weighed lightly." Considering that the postponement was requested jointly, due to issues on both sides, we will not weigh this delay against either party. *See Marks v. State*, 84 Md. App. 269, 283 (1990) ("[A] joint continuance is not chargeable to either party."); *Ferrell v. State*, 67 Md. App. 459, 464 (1986) (a delay where the parties agreed to a postponement is neutral and not charged against either party).

that the trial was scheduled for May 14, 2015. On May 8, 2015, during a hearing on motions, defense counsel stated that his case was "set for trial next week," which corroborates that appellant's trial initially was scheduled for May 14, 2015.

3.

Delay between July 16, 2015, and September 9, 2015

On July 16, 2015, the State requested a postponement.[3] The prosecutor informed the court that one of its witnesses, Officer Crowley, was unavailable for trial because he was on "pre-approved leave," but the prosecutor anticipated that appellant's case would "resolve itself" because he expected that either appellant or Ms. Beltre would eventually "admit responsibility for the firearm." The defense did not object, and the court postponed the trial until September 9, 2015.

Appellant argues that this period should weigh against the State because "a State's witness was not available." We disagree.

Here, there was no suggestion below, or on appeal, that the officer's vacation was not pre-approved or that the delay was intentional. Therefore, we accord this delay neutral status. *See Barker*, 407 U.S. at 531 ("[A] valid reason, such as a missing witness, should serve to justify appropriate delay."); *Jones v. State*, 279 Md. 1, 7 (1976) ("[A] delay caused by a missing witness might be a neutral reason chargeable to neither party . . . ."). *Accord Howard v. State*, 440 Md. 427, 448 (2014) ("The State caused 270 days of delay due to States' witnesses' unavailability; however, 'a valid reason, such as a missing witness, should serve to justify appropriate delay.'") (footnote and citations omitted). *See also*

[3] Appellant also argues that additional postponements occurred on June 16, 2015, June 26, 2015, and July 10, 2015, which he attributes to the unavailability of State's witnesses and the State's failure to provide discovery. As with the postponement that occurred on April 24, 2015, all of these postponements involved the rescheduling of the motions hearing, not appellant's trial date. Appellant provides no argument as to how these delayed his *trial*, and therefore, they have no bearing on our speedy trial analysis.

Kanneh, 403 Md. at 690 ("Where . . . a postponement is the result of the unavailability of DNA evidence, and there is no evidence that the State failed to act in a diligent manner, the grounds for postponement are essentially neutral and justified.");

4.

Delay between September 9, 2015, and September 15, 2015

On September 9, 2015, the parties again appeared before the circuit court for trial. The court, however, was unable to provide jurors, and the trial was postponed until the next day. On September 10, 2015, the court postponed the trial again, noting in the record that it was "unable to reach" the matter. Appellant's trial was rescheduled to begin on September 15, 2015.

Appellant argues that these postponements were "attributable to the court's inability to provide jurors or judges." The State argues that these "postponements, which are attributable to the circuit court, weigh lightly against the State." The State further notes that, "[i]n any event, the delay was only six days."

We agree with the State that this period should weigh against it, but only slightly. *See Strunk v. United States*, 412 U.S. 434, 436 (1973) ("Unintentional delays caused by overcrowded court dockets or understaffed prosecutors are among the factors to be weighed less heavily than intentional delay, calculated to hamper the defense."); *Barker*, 407 U.S. at 531 ("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."). As the State notes, however, this delay was a mere six days.

5.

Delay between September 15, 2015, and November 23, 2015

On September 15, 2015, the parties appeared before the circuit court, and the State requested a continuance. The prosecutor informed the court that one of its witnesses, Officer Norman, was unavailable for trial due to a pre-approved vacation. The court granted the continuance over the defense's objection.

Appellant argues that this final postponement "resulted from the unavailability of a State's witness." As indicated, s*ee supra*, Part II.B.3, this type of delay is given neutral status.

6.

Summary

In sum, of the five periods of delay between appellant's arrest and trial, only one weighs slightly against the State, and this single period of delay lasted a total of six days. Accordingly, this factor weighs against the State, but negligibly so.

C.

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. *Barker*, 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).

Appellant argues that he satisfies this factor because he "repeatedly asserted his right to a speedy trial" and objected when the State "moved to postpone the trial beyond the *Hicks*[4] date." The State argues that appellant "failed to frequently and forcefully demand a speedy trial."

Here, at the outset of the case, defense counsel included requests for a speedy trial in the notices of appearance and omnibus motion in the District Court. Appellant renewed his speedy trial claim when his attorney entered his appearance in the circuit court on March 24, 2015, and he objected on September 15, 2015, when the State moved to postpone his trial. On November 5, 2015, appellant asserted his right to a speedy trial through his motion to dismiss, which subsequently was argued before the court.

Thus, appellant asserted his right to a speedy trial. This factor, therefore, weighs in appellant's 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"). We agree with the State, however, that this factor weighs lightly in appellant's favor. *See Jules v. State*, 171 Md. App. 458, 486 (2006) (assertion of speedy trial right five days after indictment and twice more near the ultimate trial date weighed "lightly" because "the

[4] *See State v. Hicks*, 285 Md. 310, 312 (1979).

frequency of the demands for one who waited nearly sixteen months to be brought to trial [were] not extraordinary"), *cert. denied*, 396 Md. 525 (2007).

D.

Prejudice

"[T]he most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice." *Henry*, 204 Md. App. at 554. 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 argues that there was prejudice here because the delays resulted in an extended period of pretrial incarceration. The State acknowledges that appellant "was in fact incarcerated throughout the entire period between his arrest and adjudication," but it argues that Maryland courts have declined to find such a period dispositive." We agree with the State.

In *Glover*, 368 Md. at 229, the Court of Appeals concluded that, although the defendant's approximately fourteen month long "pre-trial incarceration was of constitutional dimension requiring scrutiny under the *Barker* factors," it was not "inordinate or unduly oppressive given the factual circumstances of this case. Specifically, the petitioner's trial was delayed to obtain results from DNA evidence, as well as

"administrative delays resulting from the unavailability of judges." *Id.* at 230. Accordingly, the Court found no speedy trial violation. *Id.*

Similarly, in *Malik*, 152 Md. App. 305, 322, this Court noted that the defendant "was incarcerated at the Supermax (MCAC) prison for almost the entire twenty-three-month [pretrial] period." We afforded this circumstance only "some weight," and "not a large amount because there [was] no allegation that the incarceration impaired the preparation of his defense."

Here, although appellant's pre-trial incarceration was of constitutional dimension, it was not inordinately lengthy or unduly oppressive, and he has failed to allege that his defense was in any way impaired by the delay. Accordingly, this factor weighs in appellant's favor, but it weighs only slightly against the State.

E.

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, given that only six days of the one year and six day delay are weighed against the State, and only slightly, and that appellant failed to demonstrate that he suffered any actual prejudice due to the delay, 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.

II.

Sufficiency of the Evidence

Appellant next argues that this Court must reverse his convictions "because of the insufficiency of the evidence." He notes that the three gun crimes of which he was convicted required the State to prove that he illegally possessed the gun because he previously had been convicted of a "disqualifying crime" or a "crime of violence," and he declined to stipulate to any prior conviction. He argues that, although the State presented certified copies of two such prior convictions for Dana Dixon,[5] the birthdates listed on the convictions did not match the birthdate offered by Officer Norman, and therefore, the State "failed to establish that *this* Dana Dixon was convicted" of those crimes.

The State contends that the evidence was legally sufficient to support appellant's convictions. In support of its contention that the evidence was legally adequate to show that appellant previously had been convicted of a crime of violence and a disqualifying crime, it notes that it offered two docket entries showing that the same person, "Dana Dixon," pleaded guilty to robbery and conspiracy to commit robbery, and that the birth

[5] One conviction was for robbery, both a "disqualifying crime" and a "crime of violence," and the other was for conspiracy to commit robbery, a "disqualifying crime." *See* Maryland Code (2013 Supp.) § 5-101(c) of the Public Safety Article ("PS") ("crime of violence" includes robbery); PS § 5-101(g) ("disqualifying crime" defined as: "(1) a crime of violence; (2) a violation classified as a felony in the State; or (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years").

date in the records for the conspiracy conviction matched the date of birth noted for appellant in a police report.[6]

This Court has set forth the applicable standard of review in determining the sufficiency of the evidence on appeal:

> The test of appellate review of evidentiary sufficiency is whether, "'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with sufficient evidence -- that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994). "We 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). Further, we do not "'distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.'" *Montgomery v. State*, 206 Md. App. 357, 385 (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)), *cert. denied*, 429 Md. 83 (2012).

Donati v. State, 215 Md. App. 686, 716, *cert. denied*, 438 Md. 143 (2014).

Here, to show that appellant had prior convictions disqualifying him from possessing the gun, the State presented two exhibits (State's Exhibits 8 and 9), which consisted of certified records from two criminal cases in the Circuit Court for Montgomery

[6] As appellant notes, and the record confirms, the exhibit to which the State refers was not admitted into evidence, and therefore, it was not before the jury for consideration. Accordingly, we will not consider it in our analysis. For the reasons discussed, however, we still find that the evidence was sufficient to support appellant's convictions.

County. After reviewing these two records, we conclude that, as the State argues, these records clearly involve the same defendant.

In the first case, number 117614 (State's Exhibit 8), Dana Dixon pleaded guilty to robbery. In the second case, number 117768 (State's Exhibit 9), Dana Shelton Dixon pleaded guilty to conspiracy to commit robbery. On May 16, 2011, the same judge sentenced the defendant to five years in both cases. The docket entries in the second case note that the sentence in that case was to "RUN CONCURRENT WITH SENTENCE IMPOSED IN 117614." Thus, it is clear that these criminal cases involve the same defendant.

The evidence permitted the jury to conclude that the "Dana Shelton Dixon" listed in case number 117768 was the same person listed in case number 117614. The issue presented here is whether the evidence permitted the jury to find that this person was appellant. We conclude that the evidence was sufficient to support this finding.

Officer Crowley identified appellant at trial, without objection, as "Mr. Dana Schelton Dixon." And in Officer Crowley's witness statement, admitted into evidence as State's Exhibit 14, Officer Crowley identified appellant as "Dixon, Dana Shelton."[7]

[7] Appellant argues that this evidence is faulty because "it provided no narrative about how police obtained that information." He did not, however, make that argument below. Accordingly, that evidence is properly to be considered by this Court in reviewing whether the evidence was sufficient to support appellant's convictions. *See Bastian v. Laffin*, 54 Md. App. 703, 714 (1983) ("testimony which is admitted without proper objection may be considered for whatever probative value it may have"). *Accord Old v. Cooney Detective Agency*, 215 Md. 517, 526 (1958) ("'If the evidence is received without objection, it becomes part of the evidence in the case, and . . . . may be (continued . . .)

The Court of Appeals has made clear that there is a presumption of identification of a person based on identity of names:

> "Identical names give rise to a presumption of identity of person. This presumption is slight when the name is common and there are many persons having the same name. It increases in strength with circumstances indicating the improbability of there being two persons of the same name at the same time and place, and where there is no evidence that there is any other person bearing that name. Identity, then, can be presumed from names coupled with other circumstances. There is some case law to the effect that the identity of names alone gives rise to a rebuttable presumption of identity of person."

Bowers v. State, 298 Md. 115, 130-31 (1983) (quoting 1 *Wharton's Criminal Evidence* § 103 (13th ed. 1972)).

Some jurisdictions have held that identical names, alone, is sufficient evidence to establish identity and support a conviction of a crime that requires proof of a prior conviction. For example, in *People v. West*, 697 N.E.2d 1216, 1220 (Ill. App. Ct. 1998), *appeal denied*, 714 N.E.2d 532 (Ill. 1999), the court stated that, to satisfy the government's burden to convict a defendant of unlawful possession of a weapon by a felon, which "requires proof . . . of the defendant's prior felony conviction," a "certified copy of the defendant's conviction may be offered as proof of an underlying conviction, and if the name on the certified record is the same as the name of the defendant on trial, a rebuttable presumption of identity arises." It explained that, where "the presumption is not rebutted, a defendant is not prejudiced by finding that a certified copy of his prior conviction, without more, meets the State's burden of proving this element beyond a reasonable doubt." *Id.*

(. . . continued) relied on in argument, and alone or in part may support a verdict or finding.'") (quoting 1 McCormick On Evidence § 54).

Other jurisdictions apply a similar analysis. *See Hobbs v. State*, 192 S.E.2d 903, 906 (Ga. 1972) ("Ordinarily, concordance of name alone is some evidence of identity[, and] Defendant did not deny in his statement that he was the same Willie Hobbs shown on that indictment."); *State v. Romprey*, 339 S.W.2d 746, 753 (Mo. 1960) ("Identity of names has been said to be prima facie sufficient to establish defendant's identity for the purpose of showing a prior conviction."); *State v. Wabashaw*, 740 N.W.2d 583, 594 (Neb. 2007) ("[A]n authenticated record establishing a prior conviction of a defendant with the same name is prima facie evidence sufficient to establish identity for enhancing punishment," and "[a]bsent any denial or contradictory evidence, it is sufficient to support a finding of a prior conviction."); *Thomas v. State*, 727 P.2d 1380, 1383 (Okla. Crim. App. 1986) ("Such identity of name of the appellant and the person previously convicted is prima facie evidence of identity of person, and in absence of rebutting testimony, supports a finding of such identity.").

Appellant does not directly deny that he was the person listed in the certified records. Instead, he merely asserts that there were inconsistencies with the listed birth dates, which prevents a finding that appellant was "the same Dana Shelton Dixon" named in the certified records of the prior convictions. To be sure, there were inconsistencies in the record regarding appellant's date of birth. The records for the first prior conviction list the defendant's date of birth as May 15, 1992, the records in second prior conviction list it as May 15, 1990, Officer Norman testified that he obtained information that appellant's date of birth was May 5, 1990, and Officer Crowley testified that appellant told him that

his birthdate was May 15, 1993. We note, however, that the records of both prior convictions reflect a date of birth of May 15, which was consistent with the month and day appellant provided to Officer Crowley.

Any inconsistencies in appellant's birth date, which was partly due to appellant's decision to give a false birth date, went to the weight of the evidence to be given by the jury. Under the circumstances of this case, a reasonable jury could conclude that appellant was the same "Dana Dixon" that was convicted of the crimes referenced in State's Exhibits 8 and 9. Accordingly, the evidence was sufficient to convict appellant of the gun crimes charged.

III.

Trial Testimony

Appellant next argues that, "[e]ven if the birthdates on the records of the prior convictions had matched the birthdate offered at trial by Officer Norman," his convictions should be reversed because the circuit court "abused its discretion in permitting Officer Norman to testify about [appellant's] birthdate." He contends that "the State failed to establish a foundation for the testimony – i.e., that Officer Norman had personal knowledge about [his] birthdate," asserting that "the State failed to present any evidence about *how* Officer Norman learned about the birthdate."

The State argues that the circuit court "properly exercised its discretion when it permitted Officer Norman to testify about [appellant's] birthdate." It contends that a

"logical inference" can be drawn from the context of the examination that appellant "provided Officer Norman with his date of birth as routine booking information."

A.

Standard of Review

In *Donati*, 215 Md. App. at 708-09, this Court set forth the standard of review for the admissibility of evidence:

> Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. *Hajireen v. State*, 203 Md. App. 537, 552, 39 A.3d 105 *cert. denied*, 429 Md. 306, 55 A.3d 908 (2012). This Court reviews a trial court's evidentiary rulings for abuse of discretion. *State v. Simms*, 420 Md. 705, 724–25, 25 A.3d 144 (2011). 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.'" *King v. State*, 407 Md. 682, 697, 967 A.2d 790 (2009) (quoting *North v. North*, 102 Md. App. 1, 13, 648 A.2d 1025 (1994)).

B.

Proceedings Below

At trial, the prosecutor asked Officer Norman about his involvement in charging appellant, and the follow colloquy occurred:

> [PROSECUTOR:] [Y]ou were the charging officer in this case, correct?
>
> [OFFICER NORMAN:] Correct.
>
> [PROSECUTOR:] And you typed up the charging documents?
>
> [OFFICER NORMAN:] Correct.
>
> [PROSECUTOR:] And during the course of your investigation you had to find out the defendant's name, correct?
>
> [OFFICER NORMAN:] Correct.
>
> [PROSECUTOR:] And his date of birth?

[OFFICER NORMAN:] Correct.

[PROSECUTOR:] His booking information essentially?

[OFFICER NORMAN:] Correct.

[PROSECUTOR:] Do you recall what the defendant's birthdate was that he gave you?

At this point, defense counsel objected, arguing, *inter alia*, that the officer's response would be hearsay, and the State had not provided in discovery any statement that appellant made regarding his birth date. The prosecutor contended that the officer could "still testify as to what he put down on the charging documents," to which the court responded: "Okay." Defense counsel objected again on relevance grounds, asserting that the charging documents were not evidence. The prosecutor agreed that the charging documents would not be admitted, but he asserted that he could use them to refresh the officer's recollection. The court then stated: "All right," and counsel returned to their trial tables.

The following colloquy then occurred:

[PROSECUTOR:] Officer, do you recall what you noted on your report as to what the defendant's date of birth was?

[OFFICER NORMAN:] I can't recall without looking at the report.

* * *

[PROSECUTOR:] Showing you what's been marked as State's Number 12, can you tell us what that is?

[OFFICER NORMAN:] That's the PG County police arrest record.

[PROSECUTOR:] Does looking at that record refresh your recollection as to what you know as the defendant's date of birth?

[OFFICER NORMAN:] Yes.

[PROSECUTOR:] Just let me know when you're ready.

[OFFICER NORMAN:] Okay.

[DEFENSE COUNSEL:] Objection, Your Honor.

THE COURT: Basis?

[DEFENSE COUNSEL:] Lack of personal knowledge, hearsay, foundation.

THE COURT: Overruled. You can answer the question, sir.

[PROSECUTOR:] Do you recall what you know as the defendant's date of birth?

[OFFICER NORMAN:] Yes, I have it here as 5-5-1990.

C.

Analysis

As appellant notes, Maryland Rule 5-602 provides that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Here, Officer Norman testified that he drafted the charging documents, and during that process, he gathered "booking information" about appellant, including his date of birth. Thus, it is clear from the context of the prosecutor's colloquy with the officer that he was testifying as to what he learned during his investigation. And as the State notes: "A logical inference to draw from the above exchange was that [appellant] provided Officer Norman with his date of birth as routine booking information." *See Hughes v. State*, 346 Md. 80, 94-95 (routine booking information includes the suspect's date of birth), *cert. denied*, 522 U.S. 989 (1997).

Appellant contends that, if such an inference could be drawn, the testimony should not have been permitted because the State failed to disclose in discovery that he made such

a statement to Officer Norman. When defense counsel objected to Officer Norman's testimony based on his report, however, he listed the basis as "[l]ack of personal knowledge, hearsay, foundation," not the discovery violation he asserts on appeal. Under these circumstances, this contention is not preserved for this Court's review. *See Handy v. State*, 201 Md. App. 521, 537 (2011) ("It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.") (quoting *Klauenberg v. State*, 355 Md. 528, 541 (1999)), *cert. denied*, 424 Md. 630 (2012). *Accord Peterson v. State*, 444 Md. 105, 148 (2015) ("'[W]hen an objector sets forth the specific grounds for his objection[,] . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified.'") (quoting *Brecker v. State*, 304 Md. 36, 42 (1985)).

In any event, even if we were to consider the issue, and even if the circuit court abused its discretion in admitting Officer Norman's testimony about appellant's birthdate, we would find that any error was harmless. *See Dove v. State*, 415 Md. 727, 743 (2010) (harmless error exists when "'there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). The only relevance of appellant's birthdate was in the context of showing that appellant was the Dana Dixon who committed the prior crimes listed in the certified records. The birthdate that Officer Norman provided, "5-5-1990," did not match either of these records,

which, as indicated, both listed a birth date of May 15. And the prosecutor, in closing argument, relied only on those certified records, and did not mention Officer Norman's testimony regarding appellant's birthdate. Under these circumstances, if the issue were preserved, we would conclude that any error in admitting the officer's testimony was harmless error that would not warrant reversal of appellant's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.