UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 585

September Term, 2015

STATE OF MARYLAND

v.

GARY SCOTT FLINT

Krauser, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: April 5, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The sole issue presented by this appeal is whether the Circuit Court for St. Mary's County erred in dismissing the multiple counts of burglary, assault, and malicious destruction of property, with which Gary Scott Flint, appellee, was charged, on the grounds that his right to a speedy trial had been violated. The State contends that the circuit court erred in so ruling, and we agree.

Appellee was initially charged, in the District Court of Maryland for St. Mary's County, with the aforementioned offenses, for allegedly breaking into the home of his former girlfriend and, in the process, destroying personal property of hers, and then, while inside her home, assaulting her boyfriend. A plea agreement was subsequently reached between the State and the second of appellee's three successive defense counsels, leading the State to reduce those multiple felony and misdemeanor charges to three misdemeanor offenses: second-degree assault, fourth-degree burglary, and malicious destruction of property having a value of less than $1,000. Then, after months of failed attempts to serve appellee with four successive criminal summonses, appellee obtained new defense counsel, his third and final legal counsel in this matter, who subsequently notified the State that appellee had decided not to proceed with the parties' plea agreement. Accordingly, the State re-charged appellee, in the Circuit Court for St. Mary's County, with the offenses that had been initially brought, together with an additional count of malicious destruction of property. In response, appellee filed a motion to dismiss those charges, on the grounds that his right to a speedy trial had been violated. The grant of that motion, by the circuit court, prompted this appeal.

For the reasons that follow, we vacate the circuit court's order granting appellee's motion to dismiss and remand this case to that court for it to reconsider appellee's speedy trial claim in light of this opinion.

I.

On January 1, 2014, appellee was arrested for, allegedly, breaking into the home of his former girlfriend, destroying items of personal property in so doing, and then, inside her home, assaulting her current boyfriend. He was thereafter charged, in the District Court, with first-degree assault, second-degree assault, first-degree burglary, third-degree burglary, and malicious destruction of property having a value of less than $1,000. The next day, appellee was released on his own recognizance, and he has never been re-incarcerated, at least for the aforementioned crimes.

A week later, on January 9, 2014, an attorney from the Office of the Public Defender, the first of three attorneys that would successively represent appellee in this matter, entered his appearance on behalf of appellee and demanded a speedy trial. Later that month, however, appellee retained the services of private counsel, John F. Slade, IV, Esquire, who, on January 24, 2014, entered his appearance on behalf of appellee and demanded, among other things, a speedy trial.

Four weeks later, on February 21, 2014, Mr. Slade met with the prosecutor assigned to the case to, in Slade's words, "get a sense of where the State was" and, hopefully to "get the case dismissed." Although informed that the case "would not be dismissed," the State expressed a willingness to meet with the "victims" of the crimes charged to discuss possible dispositions of the case. Four days later, on February 25, 2014, the State met with one of

the two victims, and then the other victim, two days after that. While these meetings were going on, the State took no further action on the case and, consequently, just five days later, on March 4, 2014, the District Court dismissed the pending charges, without prejudice, under the thirty day requirement of Maryland Rule 4-221.[1]

Less than ten days later, on March 13, 2014, the State met with Mr. Slade about a possible resolution of appellee's case. At that meeting, Slade informed the State that he was "authorized to negotiate on behalf of [appellee]" a plea agreement. The parties then reached an agreement, which was handwritten, pursuant to which, the State agreed to charge appellee with just three misdemeanor offenses in the District Court: second-degree assault, fourth-degree burglary, and malicious destruction of property having a value of less than $1,000, and, in return, appellee would enter a plea to those offenses, and pay restitution for the medical expenses, and for damage done to the personal property of the victims. Then, although he was to receive a sentence of 18 months of imprisonment, that sentence could be shortened, if he completed counseling and paid the ordered restitution in full. And, finally, if those conditions were met, the State would "submit" to the granting

[1] Maryland Rule 4-221(f) - (g) requires, in pertinent part, the District Court to dismiss charges, if, after thirty days, the State has not complied with the conditions listed in the rule, conditions which include, among others, filing a charging document in circuit court, amending the pending charging document, or filing a new charging document charging the defendant with an offense within the district of the District Court. Such a dismissal is without prejudice.

of a probation before judgment with respect to all charges. In response, Slade, as he would later testify,[2] informed the State that his client would accept the plea.

Pursuant to the foregoing plea agreement, the State, on March 26th, charged appellee, in the District Court, with the three misdemeanor offenses agreed to by the parties, whereupon the District Court issued, pursuant to the plea agreement,[3] a criminal summons for appellee and scheduled a hearing for May 9, 2014. Mr. Slade thereafter entered his appearance, on behalf of appellee, in the District Court and, once again, requested a speedy trial. When later asked, at the hearing on appellee's motion to dismiss for lack of a speedy trial, why he would request a speedy trial if there was a plea agreement in place, Mr. Slade testified that he did so "because I do that in all my cases." Then, when queried as to why he filed a speedy trial demand in all of his cases, Mr. Slade responded: "To be honest with you, I use the same form; so I just file that same form."

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[2] Although, at the hearing on appellee's speedy trial motion, Mr. Axley claimed that "there never was a plea agreement," the court below, while seemingly taking no position on this issue, did state, at one point, in its written opinion, granting appellee's motion to dismiss, that "the State undertook that plea agreement at its own peril." More significantly, the only person to testify at the hearing below was Mr. Slade, who agreed that he "made a communication to the State that . . . the client would accept the plea." He then confirmed that he and his client "accepted the plea" prior to the filing of the District Court charges. And, finally, the State acted in accordance with the existence of the plea agreement, as it filed reduced charges, following the meeting with Mr. Slade.

[3] The State proffered to the circuit court, at the speedy trial hearing below, that, "[a]ccording to the Agreement with counsel, the defendant would be served by way of a criminal summons and the plea would be put on the record at the scheduled trial date." Appellee did not dispute this proffer below.

After successive attempts to serve appellee with criminal summons proved futile, the District Court, on May 6, 2014, issued an arrest warrant for appellee. When Mr. Slade filed a motion to quash the arrest warrant, the court rescinded the warrant, without explanation. Nevertheless, ensuing attempts to serve appellee with criminal summonses, from June 2014 to September 2014, proved futile.

Moreover, at that time, Mr. Slade was apparently having his own problems contacting his client. In fact, he testified at the aforementioned motion hearing, that, because he was receiving no response to phone messages he had left appellee, he resorted to sending appellee letters.[4] Then, in October 2014, when the State informed Mr. Slade that the District Court was going to issue another arrest warrant for appellee, Slade requested that a criminal summons be served on him in lieu of that warrant.

Granting that request, the District Court, on October 30, 2014, issued another criminal summons for appellee, with instructions that the summons should be served on Mr. Slade. Then, on the very date that that summons was issued, a "Substitution of Appearance of Counsel" was filed, striking Mr. Slade, as appellee's attorney, and entering the appearance of Thomas Axley, Esquire, as appellee's new defense counsel, the third of three different attorneys to represent him in this matter. That same day, the State advised Mr. Axley of the negotiated plea agreement that was in place and indicated that, if appellee did not proceed with the implementation of that agreement in the District Court, then the State was prepared to proceed with the original charges in the circuit court. Mr. Axley's

[4] The contents of those letters were not disclosed.

response was to request more time to review discovery and to discuss the plea agreement with appellee, a request that the State granted.

Thereafter, the State advised Mr. Axley that appellee had until December 1st to formally accept the plea agreement. Then, on December 3, 2014, two days after the State's deadline, the State, having received no response from either appellee or his new counsel, Thomas Axley, brought charges against appellee, in the St. Mary's County circuit court, on the charges that had originally been filed against appellee, namely, first-degree assault, second-degree assault, first-degree burglary, and third-degree burglary, plus a new charge of malicious destruction of property having a value of less than $1,000. Trial on those charges was to occur on May 15, 2015.

On January 2, 2015, a year and one day after his arrest, appellee's new counsel, Mr. Axley, filed another speedy trial demand, and, approximately a month after that, a motion to dismiss the charges, claiming that appellee's right to a speedy trial had been abridged. On April 3, 2015, fifteen months after appellee's arrest, that motion was granted.

II.

In granting appellee's motion to dismiss, the court invoked the four-factor test, promulgated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). Those four factors are: the length of delay, the reason for the delay, the defendant's assertion of his right to a speedy trial, and the prejudice to the defendant engendered by the delay.

As for the first factor, the "length of delay," the court found that the relevant delay, in this case, was "approximately" fifteen months. Although the court did not specify the

precise dates of that delay, we assume that the court was referring to the period of time that ran from January 1, 2014, the date that appellee was arrested and charged in District Court, to April 3, 2015, when the circuit court granted appellee's motion to dismiss. Then, after asserting that it had been "unable to find a case" that suggested that time spent on "good faith" plea negotiations "does not count" in the speedy-trial analysis, it declared that it did count, and therefore found that the length of the delay at issue was fifteenth months, and that such a delay was "of a constitutional dimension" and "presumptively prejudicial."

The court next turned to the "reason for the delay," the second factor of the *Barker* test. It found that the delay was "due, in large part, to a lack of diligence by the State" but then acknowledged later, in its written opinion, that "much of the delay may have been caused by plea negotiation and [appellee's] unresponsiveness." The court attributed the delay to the State, because, in its words, "it [was] unclear why the State continued to request multiple summons, rather than a warrant, to bring [appellee] to court when [appellee] was supposedly unable to be served." The State could have requested, opined the court, that another warrant be issued.

Then, with respect to the third factor, the "assertion of the right to a speedy trial," the court simply observed that "[appellee] asserted his right on four occasions."[5] And, finally, as to the fourth and last of the *Barker* test: the "prejudice" engendered by the delay, the court declared that the prejudice alleged by appellee was not "particularly convincing,"

[5] The court noted that appellee had "demanded a speedy trial in District Court on January 9, 2014, January 24, 2014, and April 22, 2014 and in circuit court on January 2, 2015."

as he had been free from incarceration since his arrest, in January 2014, and had not "adequately shown how his defense ha[d] been impaired" by the delay.

Finally, notwithstanding its finding that "much of the delay may have been caused by plea negotiation and [appellee's] unresponsiveness" and that any prejudice suffered by appellee was negligible, the court concluded that the *Barker* factors weighed in favor of finding a violation of appellee's right to a speedy trial and therefore granted his motion to dismiss.

III.

The State contends that the circuit court erred in granting appellee's motion to dismiss for lack of a speedy trial. Specifically, it claims that the circuit court erred in determining that the "period of delay" was "approximately fifteen months" and then attributing that delay entirely to the State. That determination was erroneous, the State claims, because the court counted the "time spent in plea negotiations, and actions based on that apparent plea agreement" against the State. The relevant delay, in this case was, asserts the State, "approximately five months," that is, the five months that passed from the time new charges were brought in the circuit court on December 3, 2014, until April 3, 2015, the date that appellee's speedy trial motion was granted.[6]

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[6] Although the State claims that the delay was five months, it appears to us to have been actually four months, as it ran from December 3, 2014, to April 3, 2015.

An accused's right to a speedy trial is guaranteed by both the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights.[7] In determining whether that right had been violated, the court below was required, by both the Sixth Amendment and Article 21, to apply the four-factor test promulgated by the United States Supreme Court in *Barker*, which it did, but not, as we shall explain correctly. *See Divver v. State*, 356 Md. 379, 388 (1999) (The Court of Appeals "has applied the constitutional standard enunciated in *Barker* when applying Article 21.").

The four factors of the *Barker* test, as noted earlier, are "length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker v. Wingo,* 407 U.S. 514, 530 (1972). "None of these factors, [however,] are sufficient alone to establish deprivation of the right to a speedy trial; instead, they 'must be considered together with such other circumstances as may be relevant.'" *Randall v. State*, 223 Md. App. 519, 543 (2015) (citing *Barker*, 407 U.S. at 533). In sum, "courts must 'engage in a difficult and sensitive balancing process' while maintaining 'full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.'" *Id.*

But, when we engage in such a "process," we must keep in mind that, as the Court of Special Appeals has recently noted, in *Randall*, the "deprivation of the right may actually work to the accused's advantage," *id.* at 543, because, as the Supreme Court noted:

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[7] The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. AMEND. VI. And, Article 21 of the Declaration of Rights of the Maryland Constitution provides "that in all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury." MD. DECL. OF RTS. art. 21.

> Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof. Thus, unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself.

Id. (quoting *Barker*, 407 U.S. at 521).

Finally, "[w]hen 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*, 223 Md. App. at 538 (internal citations omitted). "We perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand" and, "in so doing, we accept a lower court's findings of fact unless clearly erroneous." *Id.* (internal citations omitted).

Length of Delay

We begin our analysis by considering the first of the four *Barker* factors: the length of delay. Generally, "[t]he length of delay is measured from the day of arrest or filing of the indictment, information, or other formal charges to the date of trial." *Randall*, 223 Md. App. at 543-45. A "lengthy post-indictment, pretrial delay is presumptively prejudicial and requires scrutiny under the *Barker* constitutional analysis." *Id.* (internal citations omitted). However, there is no precise method to assess the length of delay, as that assessment is "necessarily dependent upon the peculiar circumstances" of each case. *Barker*, 407 U.S. at 530-31.

The court below determined that the relevant delay, in the instant case, was "approximately fifteen months" by apparently including, in that fifteen-month period of time, the eleven months that ran from the date of appellee's arrest to the date that the State, having been informed that appellee had abandoned the plea agreement he had, through his counsel previously accepted, brought new charges in the circuit court. The State takes issue with this temporal computation, claiming that the relevant period of time for speedy trial purposes was actually five (or, as indicated in footnote six of this opinion, possibly four months), not fifteen months, that is, the five months that ran from appellee's indictment in circuit court to, presumably, the date at which the speedy trial motion was granted. We believe that the State is correct under *United States v. MacDonald*, 456 U.S. at 3, and *State v. Henson*, 335 Md. 326, 335-339 (1994).

In *United States v. MacDonald*, the Supreme Court held that the time that ran from the dismissal of charges pending against MacDonald to his subsequent indictment on criminal charges, arising out of the same incident, should not be considered in determining whether MacDonald's speedy trial right was violated. *MacDonald*, 456 U.S. at 3, explaining that "the Speedy Trial Clause has no application after the Government, acting in *good faith*, formally drops charges," because at "that point, the formerly accused is, at most, in the same position as any other subject of a criminal investigation." *Id.* at 7-9 (emphasis added). In other words, the Court held that the time between the dismissal of charges and subsequent indictment should not be included in calculating the "length of delay," when the State drops the initial charges in good faith. And that rule was

subsequently adopted and extended, by the Court of Appeals, in *State v. Henson*, 335 Md. 326 (1994).

Henson was arrested and charged in May of 1989, as a result of a shooting, which he was purportedly involved in, that had occurred earlier that month. *Id.* at 329. In July of 1989, the State nolle prossed all of the pending charges. *Id.* Then, in May of 1990, the State charged Henson, once again, with assault with intent to murder and other charges arising from that shooting. *Id.* at 338.

Although subsequent attempts to locate and serve Henson with a summons and bench warrant failed, he was finally found and arrested in February of 1992, whereupon he filed a motion to dismiss the charges pending against him on the grounds that his right to a speedy trial had been abridged. That motion was denied, and, after Henson was convicted by a jury of malicious wounding with intent to disable, use of a handgun in the commission of a felony, and battery, he noted an appeal, raising once again his speedy-trial claim.

Quoting the words of *MacDonald*, that “[t]he Speedy Trial Clause has no application after the Government, acting in good faith, formally drops charges,” *Henson*, 335 Md. at 336 (citing *MacDonald*, 456 U.S. at 6-7), the Court of Appeals held that the time that ran from Henson’s original arrest, in May of 1989, to his second arrest, in February of 1992, was not to be included in calculating the delay in bringing Henson to trial, if the State acted in good faith in dismissing the original charges. It then remanded the case to the circuit court to make that good-faith determination. In so ruling, it, in effect, extended the holding of *MacDonald* to exclude, not only the time between the dismissal of charges and subsequent indictment, as advised the Court in *MacDonald*, but also the time

that passed from arrest to the dismissal of the initial charges. And, furthermore, it clarified as to what constitutes a "good faith" termination of charges, by stating that such a termination occurs where the State "does not intend to circumvent the speedy trial right . . ." *Id*. at 338.

Here, the State, on December 3, 2014, brought charges against appellee, in the circuit court, following appellee's rejection of the terms of a plea agreement of lesser charges that he had apparently previously accepted, and the State's resultant dismissal of the lesser charges brought against appellee in accordance with that plea agreement. Clearly, the rule articulated by the Supreme Court in *MacDonald* and then adopted by the Court of Appeals in *Henson*, governing a "good faith" dismissal of charges, would apply here, that is, that the period of time preceding appellee's rejection of the plea agreement, which was apparently agreed to, should not be counted in the speedy trial calculation of the length of delay, provided the State dismissed those charges in good faith, that is, it did not dismiss the charges to, in the words of the *Henson* Court, "circumvent the speedy trial right." *Id.* Indeed, the circumstances of the instant case are even more compelling, given that, here, unlike in *MacDonald* or *Henson*, appellee arguably induced the State to not pursue the original charges against him, by communicating through his then-counsel, Mr. Slade, that he accepted the terms of the plea agreement.

And, while this question was presented to the circuit court, it was not decided by it, and it remarked that it found "no case law that directly speaks to plea negotiations being in good faith, such that the time does not count in the speedy trial analysis." Accordingly, on remand, the court should not include in the speedy trial analysis the time period from

appellee's arrest, on January 1, 2104, until the State dropped its pursuit of the plea agreement, after appellee's rejection of it, and sought the original charges in circuit court, on December 3, 2014, unless it determines that the State failed to act in good faith in dismissing all pending charges.

If this period of time is not included in the speedy trial analysis, then the delay of five months (or, as we have calculated, four months, as noted in footnote six), in a case such as this, would be insufficient to trigger the remaining *Barker* factors, much less constitute a viable speedy trial claim. *See, e.g., Doggett v. United States*, 505 U.S. 647, 652 n.1 (noting that, generally, a delay triggers a speedy trial analysis "at least as it approaches one year"); *State v. Ruben*, 127 Md. App. 430, 440 (1999) ("[A] delay of nearly 11 months from arrest to trial was of constitutional dimension, albeit barely so."). On the other hand, if the State's dismissal of the District Court charges, in accordance with the plea agreement was not in good faith, then we must turn to the remaining three factors of the *Barker v. Wingo* test, namely, the "reasons for the delay," the "defendant's assertion of his right to a speedy trial," and "prejudice to the defendant."

Reasons for the Delay

The second factor, in determining whether the right to a speedy trial was denied, under *Barker*, is the reason for the delay, which, of course, is "closely related to length of delay." 407 U.S.at 531. As the Supreme Court has made clear, "different weights should be assigned to different reasons" for delay. *Id.* For example, "a valid reason, such as a missing witness, should serve to justify appropriate delay." *Id.* But, "an attempt to delay the trial in order to hamper the defense should be weighted heavily against the

government." *Id.* And, in between those two extremes, 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." *Id.*

But, in evaluating a speedy trial claim, the "primary burden [is] on the courts and the prosecutors to assure that cases are brought to trial." *Barker*, 407 U.S. at 529 (1972); *see also id.* at 527 ("[A defendant] has no duty to bring himself to trial; the State has that duty.") (footnote omitted). And, "[i]n executing this duty, the State must act with 'reasonable diligence.'" *Randalle*, 223 Md. App. at 519 (internal citations omitted).

However, other states that have addressed the weight to be given a delay resulting from the unsuccessful resolution of a "good faith" attempt at a plea have chosen to not weigh that resultant delay against the State. *Gullatt v. State*, 368 S.W.3d 559, 571 (Tex. App. 2011) ("[D]elays caused by good faith plea negotiations are legitimate and will not be counted against the State."); *Summers v. State*, 914 So. 2d 245, 252 (Miss. Ct. App. 2005) ("[T]ime associated with an earnest attempt at plea negotiations will also not be weighed against the State.") (citation omitted). *See also State v. Eskridge*, 947 P.2d 502, 507 ("[P]lea negotiations are themselves not a factor to be held against either party.") (N.M. Ct. App. 1997); *Reed v. State*, 191 So. 3d 134, 140 (Miss. Ct. App. 2016) ("[T]o the extent that the delay in bringing [defendant] to trial was the result of the case being set for pleas at [defendant's] request and then continued when those pleas did not occur, the delay is not charged against the State.").

Moreover, to weigh such periods against the State "would," we believe, "be contrary to the policy of encouraging plea agreements," a policy which, as the Court of Appeals has observed, plays a crucial role in our administration of justice.[8] *See State v. Brockman*, 277 Md. 687, 692-93 (1976). It would, among other things, discourage the State from entering into a plea agreement where a significant amount of time had passed since arrest. Under such circumstances, the State would have every reason to fear that a defendant might agree to a plea, only to later reject it in favor of seeking a dismissal of all charges on speedy trial grounds, as apparently occurred here. *Cf. Dickey v. Florida*, 398 U.S. 30, 48 (1970) (Brennan, J., concurring) (defendant may be "disentitled to the speedy-trial safeguard in the case of a delay for which he has, or shares, responsibility."); *State v. Ruiz*, 496 N.W.2d

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[8] In *State v. Brockman*, the Court of Appeals characterized the crucial role plea bargaining plays in our criminal justice system as follows:

> [Plea] agreements . . . prevent[], or at least reliev[e], the overcrowding of our courts. . . [T]he termination of charges after plea negotiations leads to (the) prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pre-trial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. Additionally, plea agreements eliminate many of the risks, uncertainties and practical burdens of trial, permit the judiciary and prosecution to concentrate their resources on those cases in which they are most needed, and further law enforcement by permitting the State to exchange leniency for information and assistance. All in all, it is our view that plea bargains, when properly utilized, aid the administration of justice and, within reason, should be encouraged.

277 Md. 687, 692-93 (1976) (citations omitted).

789, 792 (Iowa Ct. App. 1992) ("[A] defendant may not actively, or passively, participate in the events which delay his or her trial and then later take advantage of that delay to terminate the prosecution."). Indeed, as North Carolina's intermediate appellate court has observed: "Plea bargaining is a universal and necessary practice . . . [and] is mutually beneficial to the state and defendants. Permitting defendants to avail themselves of this beneficial process and then to subsequently base speedy trial claims on delays expended in plea negotiations would be grossly prejudicial to the state." *State v. Pippin*, 72 N.C. App. 387, 394 (1985).

Furthermore, as to appellee's claim that the Court of Appeals reached a different holding in *Jones v. State*, it is without merit, though, admittedly, the *Jones* Court did state that the "right to negotiate for a plea need not be relinquished to avoid an inference either that a delay was caused by the accused or that a delay otherwise attributable to the State should be excused." *Jones v. State*, 279 Md. 1, 13 (1976).

Although the *Jones* Court rejected the State's contention that the time spent, on informal and unsuccessful plea negotiations, should not be weighed against the State in assessing a speedy trial claim, it stressed that that rejection was based on the particular circumstances of that case, circumstances which were decidedly different from those present before us in the instant case. Most significantly, unlike in *Jones*, where there were "some plea negotiations" during a "short portion" of the time period at issue, which failed to culminate in an agreement, here, there were substantial and significant plea negotiations, which, according to appellee's former counsel, resulted in a hand-written plea agreement,

which the State then sought to implement but was unable to do so, as appellee was unable to be served. Consequently, we do not reach the same result as the *Jones* Court.

However, while we hold that, in general, such a period should not be weighed against the State, we recognize that if the State failed to act in good faith in negotiating the plea, and then pursued its implementation, that is, if it sought to hamper the defense, or hoped to circumvent the defendant's speedy trial right, such a period should then be weighed heavily against it. *See Barker*, 407 U.S. at 531 ("A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government."). *See also Gullate,* 368 at 571 (Tex. App. 2011); *Summers*, 914 at 252 (Miss. Ct. App. 2005).

Here, as noted, the State originally brought charges against appellee, in the District Court, on the same day that he was arrested. Following discussions with defense counsel and the victims, the State, believing that the matter could be resolved by a plea agreement, allowed the original charges to lapse, under Maryland Rule 4-221. The plea negotiations that followed between the State and appellee's former counsel, Mr. Slade, apparently culminated in a plea agreement, which both the State and Mr. Slade believed appellee had accepted. Then, in accordance with that agreement, the State reduced the charges it had originally brought to just three misdemeanors. Over the next several months, the State, believing that the plea agreement required that appellee be served with a summons, sought to do so on several different occasions but was unable to locate appellee. Then, when the State ultimately obtained an arrest warrant, in order to implement the plea, Mr. Slade filed a motion to quash that warrant, which was granted. Finally, on the day the State served Mr. Slade, at his request, with the summons, appellee struck Mr. Slade's appearance, and

Mr. Axley entered his appearance on appellee's behalf, and Mr. Axley then requested time to review discovery and the plea. The State acquiesced to this request and granted Mr. Axley several weeks' time but informed Mr. Axley that unless, by December 1, 2014, appellee elected to proceed with the implementation of the plea agreement, the State would move forward with the original charges.

What is more, here, it appears that appellee was partly responsible for the delay from March to December 2014, a fact acknowledged by the circuit court, even though the court weighed this period entirely against the State. While the court remarked that much of the delay was a result of "a lack of diligence by the State" and that it was "unclear why the State continued to request multiple summons, rather than a warrant," the conduct of appellee, contributing to the delay, should not have been discounted. *Cf. Dickey*, 398 U.S. at 48 (Brennan, J., concurring) (defendant may be "disentitled to the speedy-trial safeguard in the case of a delay for which he has, or shares, responsibility."). It was appellee who was unresponsive to Mr. Slade's attempts to contact him, then replaced Slade with Mr. Axley as counsel, and then, nine months after the State was informed appellee had accepted the plea agreement, abandoned that agreement. Indeed, had appellee not reneged on the plea agreement in December, presumably, the matter would have been resolved by appellee entering his plea on December 16, 2014, the day it was to be heard before the District Court.[9]

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[9] Moreover, we note that, when the circuit court laid the blame for this delay on the State, it remarked that the State "could have proceeded in the second District Court case with trial on December 16, 2014." That is not a valid reason for weighing the (Contd.)

Moreover, according to the circuit court, it was Mr. Slade, not the State, who moved to rescind the arrest warrant. And, while not resolved by the circuit court, if, as the State asserts, "according to the agreement with counsel," appellee was to be served by "way of a criminal summons," the State, in not seeking further arrest warrants, was apparently acting in accordance with the plea agreement, not as a result of a lack of diligence.

Consequently, given the Court of Appeals' instruction "that plea bargains, when properly utilized, aid the administration of justice and, within reason, should be encouraged," *Brockman*, 277 Md. at 693, we hold that, if the State, in good faith, negotiated and subsequently entered into a plea agreement with appellee, or at least, reasonably believed it had, and then, in good faith, sought its implementation, only to have to dismiss the reduced charges of that agreement when appellee later abandoned it, then the period of time stretching from plea negotiations to dismissal of the plea's reduced charges should not be weighed against the State.

(Contd.) delay against the State. Indeed, that would, in effect, force the State to proceed with a trial limited to the charges in accordance with the parties' plea agreement, thereby providing appellee with the principal benefit of the very agreement he had rejected.

Assertion of the Right to Speedy Trial

The Supreme Court, in *Barker*, explained that "[t]he defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right," and noted that courts should "weigh the frequency and force of the objections." *Barker*, 407 U.S. at 529, 531-32. Appellee demanded a speedy trial four times: three of which were not in the District Court, on January 9, 2014, January 24, 2014, and April 22, 2014, respectively, and one of which was made in the circuit court, on January 2, 2015. Below, the circuit court concluded that these assertions were "to be considered and weigh in his favor."

The State contends that these assertions were "pro forma" and should not be granted much weight. While the Court of Appeals explained that *Barker* "requires us to give repeated demands for a speedy trial strong evidentiary weight," *Jones v. State*, 279 Md. 1, 16 (1976), we must also weigh "'the frequency and force of the [demands] as opposed to attaching significant weight to purely pro forma [demand].'" *Butler v. State*, 214 Md. App. January 635, 661 (2013) (quoting *Barker*, 407 U.S. at 529), *overruled in part on other grounds by Nalls v. State*, 437 Md. 674 (2014). At least two of the four demands for a speedy trial, on behalf of appellee, specifically, the demands made by Mr. Slade below, his second attorney, were, Slade admitted below, "pro forma" in nature: In fact, he conceded that he made those demands because, in his words, "I do that in all cases," adding "[I] use the same form, so I just file that same form."

Moreover, after the third demand, on April 22, 2014, appellee, notwithstanding the aforementioned speedy trial demands, was apparently uninterested in resolving this matter

at all, much less with significant dispatch, as not only the State, but his counsel, were unable to locate him during the months that followed. And the fourth demand, on January 2, 2015, appears to have been intended merely to set the stage for the motion to dismiss at issue here, which was filed less than a month later. Accordingly, on remand, the court should re-evaluate the weight it accorded appellee's demands for a speedy trial.

Finally, the Supreme Court explained, in *Barker*, that, in assessing the fourth factor, actual prejudice to the defendant, the court must consider the harms the speedy trial right protects against: (i) oppressive pretrial incarceration; (ii) anxiety and concern of the accused; and (iii) any impairment of the accused's defense. *See Barker*, 407 U.S. at 532. In rendering its decision, the circuit court, after acknowledging that "some prejudice is presumed from [appellee's] anxiety over pending charges," averred that it did not find that "the prejudice alleged" to be "particularly convincing." Moreover, as noted, if appellee was prejudiced by the delay, that delay appears to have largely been due to his actions and conduct. We therefore agree with the circuit court, that the prejudice factor cannot be accorded much, if any, weight on remand.

IV.

Consequently, we vacate the judgment of the circuit court and remand for the circuit court to reconsider its conclusion that appellee was denied his Sixth Amendment right to a speedy trial in light of this Opinion.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY VACATED, AND THE CASE IS REMANDED TO THE COURT FOR RECONSIDERATON OF ITS DECISION AND FOR ANY FURTHER PROCEEDINGS IT DEEMS NECESSARY.COSTS TO BE PAID BY APPELLEE.