UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0582

September Term, 2013

RAY GLASGOW

v.

STATE OF MARYLAND

Krauser, C.J.,
Zarnoch,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch J.

Filed: January 20, 2015

Appellant, Ray Glasgow, was convicted of second-degree burglary, fourth-degree burglary, possession of burglar's tools, theft, and malicious destruction of property in the Circuit Court for Baltimore City. Prior to trial, he moved to dismiss based on speedy trial grounds. Appellant, *pro se*, also objected to being identified by witnesses during the motion hearing. These motions were denied. He presents three questions for our review, which we quote:

1. Did the trial court err in not granting Appellant's motion to dismiss for violation of his constitutionally protected right to a speedy trial?

2. Did the trial court err in denying Appellant's request to suppress the in-court identification?

3. Did the trial court err when it failed to address Appellant's implicit pre-trial request to dismiss counsel?

For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Around 4:00 a.m. on July 13, 2011, Anthony Jobst, a retired police officer, observed Appellant crawling out of the shattered broken glass door of Metro Cleaners on North Charles Street in Baltimore City. Appellant was wearing all black and carrying a black back pack at the time Jobst observed him. Jobst followed Appellant in his truck as he walked away from the cleaners, and simultaneously called 911 on his cell phone. As Jobst followed, Appellant walked east on Lafayette Street to a Hess filling station. Appellant was out of Jobst's sight for approximately eight seconds as he followed.

Officer Brian Burke arrived at the scene about a minute after Appellant did, pulling directly in front of Jobst's vehicle, which was parked at the corner of Lafayette and Charles

Streets. Jobst identified Appellant to Officer Burke as the man he had seen exiting Metro Cleaners, pointing out broken glass present on Appellant's shirt. Believing a crime occurred, Officer Burke placed Appellant under arrest.

In a search incident to arrest, Officer Burke recovered a wrench, hammer, chisel, drill bit, wire cutters, $248.00 in rolled coins, and $130.81 in paper currency from Appellant's person and back pack.

One of Appellant's finger prints was recovered from a broken piece of metal which appeared to come from Metro Cleaners' front door.

Prior to trial, Appellant moved to suppress the fruits of Officer Burke's search of his person and back pack as his arrest was not supported by probable cause. Both Jobst and Officer Burke testified on this issue, and the motion was denied.[1] Appellant then moved to dismiss for violation of his right to a speedy trial, which was also denied.

DISCUSSION

I.

Appellant first contends that the trial court erred in denying his motion to dismiss based on his constitutional right to a speedy trial. Specifically, he alleges that the nineteen-month gap between arraignment and trial was sufficient to demonstrate that the State deprived him of his right to a speedy trial. The State asserts that, based on the factors

[1]This issue was not raised in this appeal.

announced in *Barker v. Wingo*, 470 U.S. 514 (1972), the court properly denied Appellant's motion to dismiss.

The constitutional right to a speedy trial is "separate and distinct" from the right enforced by *State v. Hicks*, 285 Md. 310 (1979) and its progeny. *See Marks v. State*, 84 Md. App. 269, 281 (1990). *See also Dalton v. State*, 87 Md. App. 673, 681-82 (1991).

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." This right is also guaranteed by Article 21 of the Maryland Declaration of Rights.[2] With respect to the Sixth Amendment guarantee, the Supreme Court has observed:

> The Sixth Amendment right to a speedy trial is . . . not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

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[2] Article 21 of the Maryland Declaration of Rights provides:

> That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

United States v. MacDonald, 456 U.S. 1, 8 (1982). *See Smith v. Hooey*, 393 U.S. 374, 377-79 (1969).

We review the trial court's denial of Appellant's motion to dismiss on speedy trial grounds by conducting a *de novo* constitutional analysis. *Glover v. State*, 368 Md. 211, 220 (2002). *See Jules v. State*, 171 Md. App. 458, 481-82 (2006). This inquiry is tied to the specific facts of each case, and so "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.'" *Brown v. State*, 153 Md. App. 544, 556 (2003) (quoting *State v. Bailey*, 319 Md. 392, 415 (1990)).

The determination as to whether a defendant's speedy trial right has not been violated is generally made in light of a balancing test articulated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). Maryland courts have "consistently applied the four factor balancing test" set forth in *Barker*. *State v. Kanneh*, 403 Md. 678, 687 (2008). The *Barker* analysis was described as follows by the Court of Appeals:

> "'When the [pre-trial] delay is of a sufficient length, it becomes "presumptively prejudicial," thereby triggering a "balancing test [which] necessarily compels courts to approach speedy trial cases on an *ad hoc* basis."' *Brady v. State*, 288 Md. 61, 65 (1980), quoting *Barker*, 407 U.S. at 530 at 116-117. The factors to be weighed are '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.' *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192, 33 L. Ed. 2d at 117. Because whether a period is presumptively prejudicial, or not, depends upon the length of a pre-trial delay, the first factor 'is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.' *Id.* And this factor

> cannot be applied until it is determined from what point the period of delay is measured. *State v. Bailey*, 319 Md. 392, 410, 572 A.2d 544, 552 (1990)."

Divver, 356 Md. at 388. The *Barker* factors cited above make up a "non-exclusive list[.]" *Brady v. State*, 291 Md. 261, 264-65 (1981). Not one of them is, by itself, "a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker*, 407 U.S. at 533. *See Kanneh*, 403 Md. at 688.

We will apply each of the *Barker* factors as they relate to this case.

Length of Delay and Reason for Delay

The initial *Barker* factor, length of delay:

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

Doggett v. U.S., 505 U.S. 647, 651-52 (1992). *See State v. Bailey*, 319 Md. at 410 (Unless delay is presumptively prejudicial, there is no further need to inquire into other *Barker* factors) (Citation omitted). Appellant was arrested on July 13, 2011, thus beginning the *Barker* clock. His trial began on February 19, 2013. The interval between the two dates was one year, seven months, and six days (587 days). The court properly found that the length of this delay was of constitutional dimension. *State v. Ruben*, 127 Md. App. 430, 440 (1999) (Eleven month delay is sufficient to trigger *Barker* analysis). There were nine separate dates

where this matter was postponed. We examine each to determine the party responsible for the delay and the underlying cause for each delay.

On November 21, 2011, the initial trial date, the State requested a postponement as it awaited lab results it needed to prove its case. The 74-day delay between that date and the next trial date of February 3, 2012 is charged to the State.

On February 3, 2012, the State again requested postponement because it had recently received fingerprint evidence that it had disclosed to Appellant. However, the evidence was not disclosed to Appellant thirty days before trial, as required by Maryland Rule 4-263(h). The 42-day delay between this date and the subsequent date of March 16, 2012 is charged to the State.

On March 16, 2012,[3] the State requested and was granted a postponement to tend to a family emergency. The delay between this date and the subsequent date of April 27, 2012 is charged to the State.

On April 27, 2012, Appellant requested a postponement to evaluate a plea deal and its affect on a potential violation of probation with another judge. The 55-day delay between this date and the next date of June 21, 2012 should be charged to Appellant.

On June 21, 2012, there was no courtroom available to try the case, so trial was rescheduled to August 14, 2012. This 54-day delay is charged to the State, because it is

[3]No transcript of this proceeding exists, however neither party disputed the facts that occurred.

ultimately responsible for conducting the trial. This delay, however, is not weighed heavily against the State, as overcrowded courts are a "more neutral reason" for delay than deliberate attempts to prejudice a defendant. *Barker*, 407 U.S. at 531.

On August 14, 2012, there was again no courtroom available for this case. It was rescheduled to October 12, 2012. Again, as above, this 59-day delay is weighed lightly against the State.

On October 12, 2012, Appellant requested a postponement because his counsel was ill. The case was rescheduled to December 12, 2012. The 62-day delay is charged to Appellant.

On December 12, 2012, there was again no courtroom available. The matter was rescheduled to December 13, 2012, when there was no judge available. The matter finally proceeded to trial on February 19, 2013. The 69-day delay between December 12, 2012 and February 19, 2013 is weighed lightly against the State.

Appellant is responsible for 117 of the 587-day delay. The State is responsible for the majority of the delay, 182 days of which were due to overcrowded courts, and therefore weighed lightly against the State. *Barker*, 407 U.S. at 531. The remaining 288 days of delay were caused by the State. One of the delays was due to a family emergency, and Appellant does not assert that it was calculated to prejudice him in any way. The remaining two delays were caused by awaiting lab results and permitting Appellant to have 30 days to examine

those lab results.[4] We are persuaded that neither of these delays were calculated in any way to prejudice Appellant's case. Accordingly, we hold that the length of the delay does weigh slightly against the state, but the reasons for delays are mostly neutral.

Appellant's Assertion of the Right

Appellant explicitly objected to the postponement on November 21, 2011 and implicitly objected on February 3, 2012, August 14, 2012, December 12, 2012 when his counsel stated, "We're ready for trial." We do give some weight to the formal objection, but do not weigh the implicit objections heavily, as they were not clearly articulated nor fervently made. This factor weighs slightly in Appellant's favor.

Prejudice

In assessing prejudice, we consider the harms against which the right to a speedy trial 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. 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.

State v. Kanneh, 403 Md. 678, 693 (2008) (Citation and quotation omitted). It is undisputed that Appellant was subjected to pretrial incarceration during the 587-day delay, and that this period did not minimize his anxiety about the case. Appellant, however, fails to demonstrate the most serious prejudice, that his defense was impaired in any way by the delay. Appellant

[4] *See* Maryland Rule 4-263(h).

offers no specific way in which his defense was prejudiced, save for "personal factors" such as disruption of employment, curtailment of his associations, and financial strain. *Divver*, 356 Md. at 395. To be sure, these issues are pertinent to Appellant's case, however, they do not demonstrate that his defense was impaired in any way.

Though the delay in this matter was protracted, the reasons for it were generally reasonable. Appellant did assert his right to a speedy trial at certain pre-trial hearings, but he did not demonstrate the most significant type of prejudice, *viz.,* impairment of his defense. Accordingly, we are persuaded that the circuit court did not err in denying Appellant's motion to dismiss based on a violation of his constitutional right to a speedy trial.

II.

The second issue Appellant raises is that the trial court erred when it denied Appellant's request to suppress an in-court identification. Following the court's other preliminary rulings, Appellant addressed the court himself and the following colloquy occurred:

> With all due respect, Judge, and bear with me. Just indulge me, just for a second here.
>
> I don't believe I can actually get a fair trial because the State, as well as the Office of the Public Defender, has already prejudiced this case. Let me explain, as best I can and as quick as I can and let me try to get to my point.
>
> On two occasions, and I'm going to address one in particular, right? The State has a witness that said -- that's going to testify that I'm the individual that he pointed out. Your Honor, that would never happen if, in fact, we did a courtroom identification. The courtroom identification cannot be possible, simply because on more than one occasion the arresting officer and

the witness was in the courtroom. He pointed me out. That's Mr. Glasgow right there. If he was never in the courtroom, he could have never identified me because I'm not the individual that he saw.

THE COURT: Alright. 15 more seconds, Mr. Glasgow.

[Appellant]: The case is all - -

THE COURT: Do you have anything else- -

[Appellant]: The case has already been prejudiced, Judge Fletcher (*sic*).

THE COURT: Anything else, sir?

[Appellant]: I strongly object. How can I get a fair trial? How can I get a fair trial when- -

THE COURT: Alright. I - - Alright. Mr. Glasgow, you may be quiet now. I have indulged you. Although you are represented by Counsel here, by very able Counsel, to speak directly. You have not said anything that would comport with any reason for me not to try the case. So, we're going to proceed to trial.

[Appellant]: I understand that. But I - -

THE COURT: I will not hear from you further.

[Appellant]: But I want it to be on record. I object. Your Honor- -

THE COURT: No.

[Appellant]: I simply object simply because how can I get a fair trial?

THE COURT: Mr. Glasgow?

[Appellant]: I wanted a court room identification.

THE COURT: Mr. Glasgow, be quiet!

[Appellant]: I wanted a courtroom identification.

THE COURT: Mr. Glasgow- -

[Appellant]: I wanted a courtroom identification - -

THE COURT:- - be quiet!

[Appellant]:- - and if he's in the court room and he's already identified me, how can I have a courtroom identification?

THE COURT: Mr. Glasgow, this is the third time I've said be quiet. If you speak again, if you speak again, you will be in contempt of court. Do you understand that?

[Appellant]: Why I be in contempt? Because can I have a fair trial?

THE COURT: Take him back to the lockup please. Wait a moment. Wait a moment. Rather than delay the case, we're going to go trial Mr. Glasgow, but you will not speak when we have jurors here.

[Appellant]: I can't have a fair trial. I cannot have a fair trial - -

THE COURT: Well, that's what- -

[Appellant]: How am I going to have a fair trial?

THE COURT: That's for me to decide.

[Appellant]: Error is error. Error is plain error.

THE COURT: That's for me to decide.

[Appellant]: The State- - the State allowed that witness to be in the courtroom when he shouldn't of. When he shouldn't have. He could not identify me until he sat there with that police officer. He could not- -

THE COURT: Mr. Glasgow?

[Appellant]: He could not identify me if I had a courtroom identification. That's not possible now.

THE COURT: Mr. Glasgow, sit- -

[Appellant]: The case is already prejudiced.

THE COURT: Sit down!

[Appellant]: The case is already prejudiced.

THE COURT: Sit down, sir! I don't have patience for you. Sit down!

[Appellant]: And I don't have patience for what just occurred to me.

THE COURT: Lock him up! Lock him up! I'll take a recess.

THE CLERK: All rise.

After proceedings resumed, the court admonished Appellant:

> In a few minutes we're going to bring jurors in. If you act up in front of the jurors, my options are to have you handcuffed, in the presence of the jurors, which is not good for your case, or, to have you removed from the courtroom, and to proceed with the trial without you here, which would mean that [trial counsel] would have to conduct it, as best he can, without being able to consult with [you] during the trial. Neither of those things is good for you, but understand that nothing you do is going to delay this trial.

Appellant was removed from the courtroom for the remainder of the day, during which the jury was selected. Following the end of jury selection, he was brought back into the courtroom and informed that throughout the case he would be given opportunities to participate in his trial, if he so chose. It was at that time that he informed the court that his problem with in-court identification stemmed from the pre-trial hearing on December 13, 2012, not the hearings that day.

Here, Appellant claims that the court erred in permitting witnesses to see him seated at the defense table, thus tainting their identification of him. We remain unsure as to what Appellant meant when he demanded a "court room identification." Appellant cites no law which supports the idea that simply sitting at a defendant's table is sufficient to taint an in-court identification. Further, Appellant asserted that his complaint stemmed not from the proceedings on the first day of trial, but rather from the hearing held on December 13, 2012. Accordingly, we hold that the circuit court did not err in denying Appellant's motion to suppress, when faced with the obviously disruptive tactics employed by Appellant.

III.

Finally, Appellant asserts that the circuit court erred in failing to address what he now terms an "implicit pre-trial request to dismiss counsel." He contends that the colloquy cited above indicated an implicit dissatisfaction with his counsel, which should have prompted the court to comply with Maryland Rule 4-215. The State counters that Appellant made no explicit or implicit request to discharge counsel, and therefore, Maryland Rule 4-215 was not implicated.

Appellant concedes that he did not make an explicit request to discharge counsel. Consequently, his argument rests on his contention that, according to the Court of Appeals, merely stating dissatisfaction with counsel is sufficient to trigger Maryland Rule 4-215. *See State v. Hardy*, 415 Md. 612, 622-23 (2010). Relying, among other cases, on *State v. Campbell*, 385 Md. 616 (2005), the *Hardy* court held, "A defendant makes such a request

even when his or her statement constitutes more a declaration of dissatisfaction with counsel than an explicit request to discharge." *Hardy*, 415 Md. at 623. The holding in *Campbell*, upon which *Hardy* relied was, based on the following statements as an implicit request for dismissal of counsel:

> regarding his dissatisfaction with his attorney, if timely, should have triggered an inquiry by the court as to whether [the defendant] wanted to discharge his counsel. [The defendant] made several statements to the court about his dissatisfaction with his attorney: "I don't like this man as my representative;" "We had conflicts way before this ever started, man in the first trial;" "The man told me he ain't going to represent me;" "He ain't have my best interest at heart;" "You all wouldn't let me fire him." ... Based upon [the defendant]'s expressed dissatisfaction with his attorney, a court reasonably could deduce that [the defendant] sought to discharge his counsel.

Wood v. State, 209 Md. App. 246, 285-86 (2012), *aff'd*, 436 Md. 276 (2013) (quoting *Campbell*, 385 Md. at 634). In *Hardy*, the Court of appeals held that the defendant's statement that he was "thinking about changing [his] attorney or something." *Hardy*, 415 Md. at 622.

Here, Appellant's statements did not begin to approach those in *Hardy* or *Campbell*. During Appellant's many colloquies with the court, he did indicate that he wanted his attorney to argue the "court room identification" motion he was asserting. In addition, he also said that he felt his case had been prejudiced by both the State and the Office of the Public Defender. He did not, however, indicate a desire to dismiss his attorney at any time. The dissatisfaction voiced in *Hardy* and *Campbell* is of a much different nature than what Appellant articulated here. *Hardy* and *Campbell* permitted defendants not versed in the law

to express a desire to dismiss their attorney through less formalistic means. Appellant's statements did not meet the threshold demonstrated in either case. We find no error.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.