UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

Nos. 2778, 2779, 2780, 2782

September Term, 2013

IN RE: YOHANS R.

Eyler, Deborah S.,
Arthur,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: June 24, 2015

On August 12, 2013, the State filed a petition in the Circuit Court for Prince George's County, sitting as a juvenile court, alleging that Yohans R. was involved in the commission of an act that, if committed by an adult, would constitute armed carjacking. *See* Md. Code (2002, 2012 Repl. Vol.), § 3-405(c) of the Criminal Law Article. Over the preceding 12 months, the State had filed and dismissed adult criminal charges against Yohans R. for the same offense.

On November 20, 2013, the juvenile court conducted a hearing, at which it denied Yohans R.'s motion to dismiss on speedy trial grounds. At an adjudication hearing on the following day, November 21, 2013, the juvenile court determined that Yohans R. was involved in the alleged conduct.

The juvenile court conducted a disposition hearing on December 20, 2013, in this and three other of Yohans R.'s cases. At that proceeding, the juvenile court changed Yohans R.'s placement in all matters from a "Level B" commitment to the more stringent, out-of-home, "Level A" commitment.

Yohans R. took a timely appeal from the disposition. By order dated September 5, 2014, this Court consolidated the four cases for appeal.[1]

---

[1] The four juvenile cases are:

Case No. JA-11-1572: On December 8, 2011, the State filed a juvenile petition alleging Yohans R.'s involvement in a first-degree assault.

Case No. JA-12-0109: On January 27, 2012, the State filed another petition, alleging Yohans R.'s involvement in a first-degree assault.

(continued...)

QUESTIONS PRESENTED

Yohans R. presents two questions on appeal, which we restate slightly, as follows:

1. Did the juvenile court err by denying Yohans R.'s motion to dismiss on speedy trial grounds?

2. Did the juvenile court err in changing Yohans R.'s placement from a Level B placement to a more restrictive Level A placement?

The first question refers solely to the trial court's denial of Yohans R.'s motion to dismiss the most recent petition, Case No. JA-13-1151, on speedy trial grounds. The second issue challenges the trial court's final disposition of all four of the consolidated cases that are before us. For the reasons set forth below, we answer in the negative as to both questions and affirm.

FACTUAL AND PROCEDURAL HISTORY

Because the principal legal question in this case involves the correctness of a ruling on a pre-trial motion to dismiss, it is unnecessary to discuss in detail the evidence that was

[1](...continued)

Case No. JA-12-0772: On May 17, 2012, the State filed a petition alleging Yohans R.'s involvement in a "mutual affray."

Case No. JA-13-1151: This case, involving an alleged carjacking, is the only petition discussed in Yohans R.'s first issue on appeal.

Juvenile courts found Yohans R. to be involved in the acts alleged in the first three cases here listed. At the time of his arrest for Case No. JA-13-1151, for carjacking, Yohans R. had active supervision orders with the juvenile court for these three cases.

developed at trial. *See Hill v. State*, 418 Md. 62, 66-67 (2011). We nevertheless summarize the underlying facts for context.

The main case before us arises out of a carjacking that took place at approximately 1:00 a.m. on Sunday, August 19, 2012. On that night, Monica White-Gant, age 60, was arriving home from work. As she drove into her community, she noticed two young men sitting on a playground fence.

Just after Ms. White-Gant parked her vehicle, she heard a voice say, "[J]ust give me the keys." When she turned around, one of the young men "had a gun in [her] face." She recognized the gunman and his companion as the two young men whom she noticed while driving into her community.

Ms. White-Gant told the gunman that she would give him the keys if he lowered his weapon. The gunman took the keys, and the two young men drove away in her car. After they fled, Ms. White-Gant went inside her home, and her sister called the police.

The youths were arrested in the District of Columbia on the following day, August 20, 2012, after a chase in which they crashed Ms. White-Gant's car into another car and unsuccessfully attempted to escape on foot.

One of the youths was Yohans R., who gave the police a false name, claiming to be "Malik Foxx P." Although Yohans R. did provide his true birth date, which indicated that he was 15 years old, a detective matched the name "Malik Foxx P." with a person who was 16 years old. Under Maryland law, a juvenile court does not have jurisdiction over a child

who is 16 or older and who is alleged to have committed a carjacking. Md. Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 3-8A-03(d)(4)(xii).

On August 21, 2012, two days after the carjacking, the District Court of Maryland for Prince George's County issued a warrant for "Malik Foxx P." Pursuant to that warrant "Malik Foxx P." was extradited from a District of Columbia detention center to Prince George's County on September 24, 2012.

Yohans R., a/k/a "Malik Foxx P.," appeared in district court the next day, September 25, 2012. At that time, Yohans R. gave the court his correct name.

Yohans R. remained in adult detention until October 9, 2012. On that day, at a bail review hearing, Yohans R.'s counsel told the court that her client was 15 years old and that on the following day his mother would present the court with a birth certificate. Although no one submitted a birth certificate to the court before Yohans R.'s juvenile adjudication in 2013, the State dismissed the adult charges against "Malik Foxx P." on October 10, 2012, the day after the bail review hearing.

For the following five months, Yohans R. was not subject to any criminal prosecution or delinquency petition. Yohans R. was, however, committed to a juvenile detention facility pursuant to writs of attachment in the three other juvenile matters that have been consolidated with the present appeal. Later, on November 27, 2012, the Department of Juvenile Services ("DJS") placed him in the Meadow Mountain Youth Center.

On March 7, 2013, the State again charged Yohans R. as an adult (under the name of "Malik Foxx P.") even though he was still only 15 years old. On July 5, 2013, however, the State again dropped all adult charges, this time as a result of a court-ordered investigation into Yohans R.'s name and identity. On July 30, 2013, the court rescinded the commitment orders that were in place for Yohans R.'s three other cases and placed him on supervised probation.

The State filed a juvenile petition against Yohans R. on August 12, 2013, alleging, for a third time, that he committed the carjacking and related offenses. On August 28, 2013, the court, sitting as a juvenile court, ordered that Yohans R. be released and placed on electronic monitoring. Yohans R. moved the court to dismiss the carjacking case on both speedy trial and statutory grounds.[2]

The case came before the juvenile court on November 20, 2013, when it heard argument on the motion to dismiss and denied the motion. The case proceeded to an adjudication, and on November 21, 2013, the court found Yohans R. to be involved as to all counts.

On December 20, 2013, following a disposition hearing concerning all four of the now-consolidated cases, the court ordered that Yohans R. be committed to Level A placement. This timely appeal followed.

[2] He has abandoned the statutory grounds on this appeal.

DISCUSSION

I. Speedy Trial

Yohans R. argues that the State violated his right to a speedy trial because of the 15-month delay from arrest to trial, which he attributes to the State's failure to conduct an adequate investigation of his age. The States concedes that the delay was "presumptively prejudicial," but argues that the delay occurred largely because Yohans R. gave a false name and that he did not suffer significant prejudice. We agree with the State.

A. Legal Standards

A criminal defendant is guaranteed the right to a speedy trial under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights.[3] *See Divver v. State*, 356 Md. 379, 387-88 (1999); *Epps v. State*, 276 Md. 96, 102 (1975). "[A]s a matter of fundamental fairness," this speedy trial right also applies to juvenile adjudications. *In re Thomas J.*, 372 Md. 50, 70 (2002).

To address allegations of violations of this right, Maryland courts apply the four-factor balancing test from *Barker v. Wingo*, 407 U.S. 514 (1972). *See State v. Kanneh*, 403 Md. 678, 687 (2008); *Thomas J.*, 372 Md. at 70; *Glover v. State*, 368 Md. 211, 221 (2002);

[3] The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." Article 21 of the Maryland Declaration of Rights states: "[I]n all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury." Maryland courts usually construe Article 21 in accordance with the Supreme Court's speedy-trial jurisprudence. *See Brown v. State*, 153 Md. App. 544, 555 (2003) (quoting *Stewart v. State*, 282 Md. 557, 570 (1978)).

Divver, 356 Md. at 388. Weighing both the conduct of the prosecution and the defense, this Court applies four factors to determine whether a defendant's right to a speedy trial has been violated: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Kanneh*, 403 Md. at 687-88 (quoting *Barker*, 407 U.S. at 530) (internal citations omitted); *Thomas J.*, 372 Md. at 72.

"The first factor 'is to some extent a triggering mechanism.'" *Divver*, 356 Md. at 388 (quoting *Barker*, 407 U.S. at 530). "'Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.'" *Divver*, 356 Md. at 388 (quoting *Barker*, 407 U.S. at 530).

Even if the delay is "presumptively prejudicial," "'none of the four factors [is] either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *State v. Bailey*, 319 Md. 392, 413-14 (1990) (quoting *Barker*, 407 U.S. at 533). "The determination must be made upon an overall view of the circumstances peculiar to each particular case, keeping in mind not only the rights of the defendant but also the interests of society." *Id.*, 319 Md. at 415.

On appellate review, we afford no deference to a trial court's conclusion as to whether a defendant's constitutional right to a speedy trial was violated. *Howard v. State*, 440 Md. 427, 446-47 (2014); *accord Glover*, 368 Md. at 220 ("[i]n reviewing the judgment on a motion to dismiss for violation of the . . . right to a speedy trial, we make our own

independent constitutional analysis"). Nonetheless, "we accept a lower court's findings of fact unless clearly erroneous." *Glover*, 368 Md. at 221 (citing *Rowe v. State*, 363 Md. 424, 432 (2001)); *accord Butler v. State*, 214 Md. App. 635, 655 (2013).

B. Analysis

We conclude, upon an independent constitutional appraisal of the facts at hand, that Yohans R. was not denied his right to a speedy trial under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights.

1. Length of Delay

There is no hard line dividing acceptable delays of trials from those that are presumptively prejudicial. For one thing, the permissible amount of delay depends in part on the nature and complexity of the charges against the defendant. *Glover*, 368 Md. at 224. The Court of Appeals, however, has "employed the proposition that a pre-trial delay greater than one year and fourteen days was 'presumptively prejudicial[.]'" *Glover*, 368 Md. at 222-23 (collecting cases); *see also Brady v. State*, 291 Md. 261, 265 (1981) (14-month delay gave rise to prima facie speedy trial claim); *Battle v. State*, 287 Md. 675, 686 (1980) (noting State's concession that eight-month, 20-day delay might be of constitutional dimension).

Here, the State concedes that the delay was presumptively prejudicial. Nonetheless, even accepting the State's concession,[4] "[t]he length of the delay, in and of itself, is not a weighty factor." *Glover*, 368 Md. at 225.

2. Assertion of Right

We address the third factor next because it may be disposed of most quickly. Yohans R. did not fail to assert his right to a speedy trial. The State acknowledged as much at the juvenile hearing and on appeal. This factor thus weighs in Yohans R.'s favor.

3. Responsibilities for the Delay

"Closely related to length of delay is the reason the government assigns to justify the delay . . . [and] different weights should be assigned to different reasons." *Thomas J.*, 372 Md. at 74 (quoting *Barker*, 407 U.S. at 531). By way of guidance, the *Barker* Court explained:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or over-crowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the

[4] It is unclear that the concession is warranted. *See State v. Henson*, 335 Md. 326, 336 (1994) ("where it is shown that the State has acted in good faith, . . . the period between the good faith termination of a prosecution and the reinstitution of that prosecution . . . will not be considered in the speedy trial analysis"). Under that principle, we would not count the six-month period from August 20, 2012, when the State first charged Yohans R. as an adult, until March 7, 2013, when it erroneously recharged him as an adult (under the name of "Malik Foxx P.") after initially dismissing the first set of charges.

> defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

407 U.S. at 531.

Furthermore, "'a delay attributable solely to the defendant himself would not be used to support the conclusion that he was denied a speedy trial.'" *Thomas J.*, 372 Md. at 74 (quoting *Bailey*, 319 Md. at 412). "[A] defendant cannot profit from his own wrong in delaying a trial." *Powell v. State*, 56 Md. App. 351, 365 (1983).

In considering the factor of delay, we shall divide the 15-month period between arrest and trial into four periods: (1) the period from Yohans R.'s arrest on August 20, 2012, until the dismissal of the first set of adult charges against him on October 10, 2012; (2) the period from October 10, 2012, until the State indicted him on the same set of adult charges on March 7, 2013 (under the name of "Malik Foxx P."); (3) the period from March 7, 2013, until July 5, 2013, when the State dismissed the second set of adult charges; and (4) the period from July 5, 2013, until November 20, 2013, when the trial in juvenile court commenced.

In denying Yohans R.'s motion to dismiss, the circuit court found that the initial delay occurred because he had given the authorities a false name. Because the false name belonged to someone who was 16 years of age, Yohans R. led the authorities to mistakenly believe that they had to charge him as an adult. *See* CJP § 3-8A-03(d)(4). The State dismissed the charges on October 10, 2012, one day after Yohans R.'s attorney informed the circuit court

that his client was only 15 years old. In these circumstances, the juvenile court was not clearly erroneous in attributing the initial delay to Yohans R. alone.

In evaluating the second period of delay, from October 10, 2012, until the indictment of "Malik Foxx P." on March 7, 2013, the juvenile court found that "each party contributed" to the delay. According to the court, the delay resulted from the complexity of the case and the seriousness of the charges, as well as from the continuing consequences of Yohans R.'s initial failure to inform the authorities of his true name. While the State certainly had information suggesting that Yohans R. (or "Malik Foxx P.") might be a juvenile who could not be re-charged in the circuit court in March 2013, the court found that the delay weighed more heavily against Yohans R. because it ultimately derived from his deceptive use of the alias. The juvenile court was not clearly erroneous in concluding that both parties bore some responsibility for the second period of delay, but that Yohans R. was more responsible than was the State.

In evaluating the third period of delay, from March 7, 2013, until the dismissal of the second set of adult charges on July 5, 2013, the circuit court observed that Yohans R. did not object to the charges for almost two months until May 6, 2013, when his attorney moved to transfer the case against "Malik Foxx P." to juvenile court. At that point, the court ordered DJS to conduct a thorough background investigation, which determined that Malik Foxx P.'s real name was Yohans R. and that his date of birth was June 3, 1997. In response, the State dismissed the charges on July 5, 2013, on the date of the scheduled hearing on the motion to

transfer the case to juvenile court. In view of Yohans R.'s delay in asserting his rights and the State's prompt and timely response, the juvenile court was not clearly erroneous in concluding that Yohans alone bore the responsibility for this third period of delay.

Finally, while the circuit court made no express finding about the last period of delay, from July 5, 2013, until the commencement of trial in juvenile court on November 20, 2013, it was clearly not attributable solely to the State. The State filed a delinquency petition against Yohans R. in juvenile court on August 12, 2013, five weeks after the dismissal of the second set of adult charges, and well within the applicable statutory deadlines.[5] While the adjudicatory hearing did not commence until more than 60 days after service of the petition on August 28, 2013, as Rule 11-114(b) requires, the additional three weeks of delay occurred, in part, because Yohans R. requested a postponement. While the State requested one postponement as well, Yohans R. does not argue that the State lacked the requisite extraordinary cause. No impermissible delay was attributable to the State.

In summary, the circuit court was not clearly erroneous in attributing nearly all of the delay to the confusion engendered by Yohans R.'s use of an alias or pseudonym. Certainly, none of the delay resulted from indifference or bad faith on the State's part.

[5] CJP § 3-8A-10(c)(3)(i) permits a DJS intake officer to authorize the filing of a petition against a juvenile within 25 days of receiving a complaint. CJP § 3-8A-13(b) requires the State's Attorney to prepare and file a petition alleging delinquency within 30 days after the receipt of a referral from the intake officer. Here, the intake officer received the complaint in July 2013, and the State filed the petition on August 12, 2013.

4. Prejudice

The last element of the *Barker* inquiry is whether, and to what extent, Yohans R. suffered any actual prejudice as a result of the delay. The Court of Appeals recited the established standard under *Barker*:

> [P]rejudice should be weighed with respect to the three interests that the right to a speedy trial was designed to preserve: (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.

Kanneh, 403 Md. at 693 (quoting *Barker*, 407 U.S. at 532).

"Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532. "[W]holly aside from possible prejudice to a defense on the merits," however, inordinate delay may seriously interfere with the defendants' liberty, whether they are free on bail or not, and may disrupt employment, drain financial resources, curtail associations, subject defendants to public obloquy, and create anxiety in them, their families, and their friends. *See Epps*, 276 Md. at 118 (quoting *United States v. Marion*, 404 U.S. 307, 320 (1971)).

We take particular care where the delay involves a minor. *See Thomas J.*, 372 Md. at 75-76 (stating that because of the "nature of adolescence," long delays responding to youthful misbehavior may greatly curtail corrective impact of juvenile court process); *see also id.* at 79 (citation omitted) ("a juvenile . . . is less likely than an adult to preserve his or her memory concerning the incident in question, his or her whereabouts on relevant dates, the identity of potential witnesses, and various other crucial details").

As to the first factor, we see no "oppressive pretrial incarceration." On the carjacking charges, Yohans R. was incarcerated from August 20, 2012, until October 10, 2012, when the district court dismissed the case against him. Most of that period of incarceration was, however, attributable to Yohans R.'s flight into the District of Columbia, which necessitated lengthy extradition proceedings, and to his failure to disclose his true name. In Maryland, Yohans R. was incarcerated only from September 24, 2012, until October 10, 2012, the day after his attorney informed the district court that he was 15 years old. That 16-day period of incarceration was not oppressive. *Thomas J.*, 372 Md. at 77 (holding that 20-day period of incarceration was not oppressive).[6]

As to the second factor, it is reasonable to infer that the 15-year-old Yohans R. experienced anxiety and uncertainty while he was awaiting trial on the carjacking charges. Nonetheless, for much of the 15-month period between the carjacking and the trial, Yohans R. was facing no charges at all, as the first set of charges were dismissed on October 10, 2012, and not reinstituted until March 7, 2013. Nor is there much in the record to rebut the juvenile court's finding that Yohans R. experienced no more anxiety than a juvenile normally would when facing serious charges of armed carjacking. While Yohans R. argues that he faced the prospect of a trial in circuit court, his attorney moved to transfer the charges to juvenile court when the State reinstituted them and, later, succeeded in having those charges

[6] In the other, consolidated cases, Yohans R. was placed in a secure facility, Meadow Mountain Youth Center, on November 27, 2012, and was committed to supervised probation on July 30, 2013.

dismissed altogether. In the circumstances, this case does not involve an unusual level of anxiety or concern.

As to the third and most important factor, the circuit court was not clearly erroneous in finding that the delay had no effect on Yohans R.'s ability to communicate with his counsel or to mount a defense to the State's charges. Yohans R., through counsel, was able to move the circuit court to transfer the case to juvenile court, and, once the juvenile petition had been filed, was able to participate in discovery, file a motion for continuance, and argue a motion to dismiss on the first day of adjudication. To the extent that Yohans R. had a defense,[7] he was able to present it. The delay did not impair his defense.

5. Conclusion

Balancing the relevant factors, we hold that the State did not violate Yohans R.'s speedy trial rights. The delay was almost entirely attributable to Yohans R. himself, and none of it resulted from indifference or bad faith on the State's part. Yohans R. did not show that he had suffered any unusual amount of anxiety or concern, nor did he show that the delay impaired his defense. The juvenile court, therefore, did not err in denying the motion to dismiss.

[7] Yohans R.'s defense appears to have consisted of his mother's testimony that he was home in bed at the time of the carjacking.

II. Disposition

Yohans R. argues that the juvenile court erred and abused its discretion when, at the final disposition on December 20, 2013, it changed his placement from Level B to the more stringent, out-of-home Level A confinement. We see no error or abuse of discretion.

The juvenile court, after reviewing the four juvenile petitions against Yohans R., and hearing argument from both parties, announced his changed placement:

> I've had the opportunity to review all four of your files including the predisposition investigation report . . . that's in JA-13-1151. Yes, and I'm looking at the report that was presented to me back in June when I declined to rescind the commitment. . . . [T]he Court will in fact commit the respondent to Level A.

The Juvenile Causes Act, codified at CJP §§ 3-8A-01 to -34, requires juvenile courts to balance the three objectives of "(i) [p]ublic safety and the protection of the community; (ii) [a]ccountability of the child to the victim and the community for offenses committed; and (iii) [c]ompetency and character development to assist children in becoming responsible and productive members of society." CJP § 3-8A-02(a)(1).

Disposition hearings[8] in juvenile delinquency cases such as Yohans R.'s are governed by section 3-8A-19(d), which provides, in pertinent part, that, in making a disposition on a juvenile petition, a juvenile court may:

[8] Section 3-8A-01(p) provides that a "disposition hearing" means "a hearing under this subtitle to determine: (1) Whether a child needs or requires guidance, treatment, or rehabilitation; and, if so (2) The nature of the guidance, treatment, or rehabilitation."

> (i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;
>
> (ii) . . . commit the child to the custody or under the guardianship of the [DJS], the Department of Health and Mental Hygiene, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is terminated with approval of the court or as required under § 3-8A-24 of this subtitle; or
>
> (iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

CJP § 3-8A-19(d)(1).

"The matter of disposition in a juvenile case is committed to the sound discretion of the juvenile judge[.]" *In re Hamill*, 10 Md. App. 586, 592 (1970); *accord In re Julianna B.*, 179 Md. App. 512, 575 (2008), *vacated on other grounds*, 407 Md. 657 (2009).

At the disposition hearing, after the juvenile court had found that Yohans R. had committed a carjacking (including related handgun offenses) against a 60-year-old woman, the court heard arguments from both sides as to the proper disposition. The defense argued for a placement of probation. The State outlined its reasons supporting a more stringent placement, emphasizing the nature of the offense, the psychological and economic harm that it caused to the victim, and Yohans R.'s history of violent behavior (including, among the three juvenile cases now consolidated in this appeal, two prior findings of involvement in acts that would constitute first-degree assault). The State added that Level B commitment

had been "entirely unsuccessful." Indeed, the carjacking in this case appears to have occurred while Yohans R. was receiving juvenile services as a result of his earlier actions.

In light of the facts before the court, the juvenile court unquestionably acted within its discretion in changing the placement from Level B to Level A confinement. We affirm the final disposition.

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