Circuit Court for Charles County
Case No.: C-08-JV-22-000016

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 995

September Term, 2022

IN RE: T.W.

Shaw,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 21, 2023

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

The State filed a delinquency petition in the Circuit Court for Charles County, alleging that T.W., a juvenile, was involved in a second-degree burglary and attempted theft of a motorcycle from a store in White Plains, Maryland. Following a bench trial, Appellant was found to be involved in the crimes of second-degree burglary and possession of burglar's tools and was placed on supervised probation. In this timely appeal, Appellant asks:

> Did the juvenile court err by denying T.W.'s motion to dismiss for excessive delay in violation of his statutory and constitutional rights to a speedy adjudication?

For the following reasons, we affirm, in part and vacate in part, the judgment of the juvenile court and remand for further proceedings consistent with this opinion.

BACKGROUND

Appellant's sole issue on appeal alleges violations of the time deadlines associated with his juvenile case, therefore, a detailed recitation of the underlying facts of the case is not necessary. *See Thomas v. State*, 454 Md. 495, 498-99 (2017). In order to provide context, we include a summary of the facts adduced at the adjudication hearing.

On December 25, 2021, Charles County Sheriff's Office, Police Officer Justin Burbank responded to Atlantic Cycle & Power, a motorcycle dealership located on Crain Highway in White Plains, Maryland. The store's alarm had been activated and police were alerted that someone was in the front vestibule area of the business after hours. Upon entering, Officer Burbank saw Appellant inside the area between the first and second set of doors to the dealership. Both sets of doors had been pried open, and a security roll-down door had also been cut. The officer ordered Appellant to come out with his hands

raised. Appellant was then taken into custody, searched incident to arrest, and agreed to speak to the police. The police recovered tools, including bolt cutters and a pry bar, gloves, and a face mask at the scene.

The following is a chronology of the dates at issue:

December 25, 2021: *Arrested and Charged* with attempted breaking into the Atlantic Cycle & Power store, located in White Plains, Charles County, Maryland. Released to grandmother after processing.

February 16, 2022: *Charges forwarded* from police to Department of Juvenile Services ("DJS") intake officer. [1]

March 1, 2022: *Charges forwarded* from DJS to State's Attorney.

March 30, 2022: *Juvenile Petition filed* by State's Attorney.

April 4, 2022: *Juvenile Petition served*.

April 13, 2022: *Preliminary Hearing*

April 14, 2022: *Entry of Appearance* of Counsel.

May 11, 2022: *Status Hearing*

[1] Neither the "complaint" nor the specific dates the charges were forwarded from the police to DJS and then DJS to the State's Attorney appear to be included as separate documents or exhibits in the record filed in this Court. Instead, these dates are based on the undisputed proffers of Appellant's defense counsel, as asserted in the Motion to Dismiss for Excessive Delay, filed in the juvenile court. *See generally, Com. Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 643 (1997) (recognizing that lawyers, as officers of the court, "occupy a position of trust and our legal system relies in significant measure on that trust"). In that motion, T.W.'s counsel referenced an "Intake Formal Action Notification Letter" from DJS, but that letter is not included on the record on appeal. In addition to the uncontested proffer, Appellant concedes on appeal that the State's Attorney filed the petition within thirty (30) days after receiving the charges from DJS.

May 25, 2022: *Adjudication Hearing (scheduled, but postponed*). State's request for postponement granted. Adjudication rescheduled to June 29, 2022.

June 14, 2022: *Motion to Dismiss for Excessive Delay filed*.

June 29, 2022: *Adjudication Hearing (held)*. Appellant's Motion to Dismiss for Excessive Delay heard and denied.

July 27, 2022: *Disposition Hearing*.

Pertinent to our discussion is the first scheduled Adjudication Hearing on May 25, 2022. On that day, the State requested a postponement because it learned that morning at 8:15 AM, that the responding officer, Justin Burbank, "called out sick and is unavailable to testify." The State informed the court that the 60th day from the day the petition was served was May 31, 2022[2]. *See* Md. Rule 11-421 (b) (discussed *infra*).

The court granted the State's motion, stating:

> All right, Madam Clerk, let's do this. Let's grant the State's request to continue the case. Let's set the case for June 22nd, at 8 a.m. Excuse me, 9 a.m. The -- my -- my feeling on this is in age of the pandemic people calling in sick, you know, I have to sort of treat it a little bit differently, you know. So June 22nd, at 9 a.m. we'll do adjudication.

Appellant's counsel objected, asserting that she was ready to proceed, and the proposed new hearing date conflicted with her schedule. The court responded, "All right. I don't know if I said it, which is probably good cause to go outside the time. But do you want the 22nd or the 29th?" Maintaining the objection, Appellant's counsel stated,

[2] The parties agree the actual 60th day following service was June 3, 2022.

"[b]etween those two dates we would choose the 29th." Adjudication was reset for June 29, 2022.

Thereafter, Appellant filed a written Motion to Dismiss for Excessive Delay in Violation of Respondent's Statutory and Constitutional Rights to a Speedy Trial. That motion was heard by the juvenile court prior to adjudication. As will be examined in more detail in the following discussion, Appellant argued there were two delays at issue: 1) the delay in forwarding the complaint by the police to DJS; and 2) the delay in subsequently scheduling adjudication. Of these, the parties and the court spent most of the hearing on the latter issue.[3]

Appellant argued that the adjudication hearing needed to be held within 60 days of service of the delinquency petition or counsel's appearance, whichever is earlier and "extraordinary cause" is required to extend this deadline. Md. Rule 11-421 (b) (2); Md. Rule 11-421 (b) (6). Appellant argued there was not extraordinary cause to postpone the original adjudication, scheduled for May 25, 2022, and stated:

> Based on that, this case was set for adjudication on May 25th, and we showed up ready for adjudication on May 25th.
>
> That morning after telling Counsel that they would be ready for adjudication, the State asked for a continuance saying that one of the officers called in sick.

[3] Neither the court nor the State substantively responded to Appellant's arguments concerning the initial delayed forwarding of the complaint. According to Appellant's proffers, the arresting officer filed the complaint with the Department of Juvenile Services intake officer ("DJS") on February 14, 2022. Appellant then noted that DJS had "25 days to determine what they're going to do with the case. If it's forwarded to the State's Attorney's Office, they have 30 days to decide whether or not to petition their case."

> We objected to that continuance. We were given no explanation of what kind of sick we're talking about, was it a broken ankle, was it COVID symptoms? That would obviously affect whether or not there is good cause to continue a case based on the officer calling in sick.
>
> But even if the Court were to find that that was a valid reason to continue the case, there's no explanation, there's no, there's really no good reason to continue the case outside of 60 days (inaudible).
>
> I don't know why the officer called in sick. I did -- we didn't get any more information about that, but the Court wasn't closed because of COVID, we -- you know, the truth is in that timeline I had some, had to stay out of Court because of COVID and had since returned and been able to handle quite a few cases.[4]
>
> The Court's been open this entire month, there's been no day that it was closed because of COVID.
>
> And instead of -- and, you know, even if there was a concern about that specific day, May 25th, the Court could have and should have re-set this case to the following day, find out more from the officer the following week so that the officer would have time to recover.
>
> These days I think COVID quarantine time is either five, 10 days, depending on what the situation is. There was no reason to, for this case to be set out as far as it was set.
>
> And when re-setting this case, the Court did not find extraordinary cause within the 60-day time limit; instead, what the Court found was good cause.
>
> And, you know, I, I don't know that I agree that there was good cause to go outside of the 60 days, but either way, we're not at the extraordinary cause standard.

Appellant also asserted that his constitutional right to a speedy trial was violated. Addressing the required factors of *Barker v. Wingo*, 407 U.S. 514 (1972), counsel stated:

> In this case we've gone outside of the Court's (inaudible) rules, but we've also violated [T.W.'s] Constitutional rights to a speedy trial,

[4] The Covid-19 Health Emergency as to the Maryland Judiciary was lifted on March 28, 2022. See https://www.mdcourts.gov/coronavirusorders

implicating his Constitutional right to a speedy trial and violating that right because of the length of delay, because of the reason for the delay, because he asserted his right to a speedy trial, because of the prejudice that he has suffered as a result of this.

[T.W.] and his grandmother came to Court on May 25th ready for trial. I don't think we found out that this case was getting continued until close to noon on that date, after they had been sitting around for a few hours.

Then he came to Court again today ready for trial, ready for an adjudication; and he sat here from 10:00 until after noon, I think it was about 12:15 when his case was first called, only to find out his case was getting pushed to the afternoon.

He came back in the afternoon and we had to wait for some other cases to be dealt with and now here we are at 2:40 on the second day that was set for adjudication, well outside of the 60-day time.

This has weighed on [T.W.] This has weighed on his family. His father's at work today and couldn't be here with him, which is why his grandmother is the one who is here with him, and it's been frustrating to them.

It also affects our ability to assist in his Defense because of the issues that I discussed before, when it comes to memory, when it comes to his recollection of the events and really when it comes to whatever services the Court were to offer if he were found involved and connecting them back to the allegations for which we are before the Court.[5]

The State responded:

[STATE]: I did make [T.W.'s COUNSEL] aware of that early in the morning when I became aware, became aware of the officer's (inaudible) delay.

As stated, that morning when we were in Court when this matter was called, called, I told her initially that we were prepared to move forward and that Email I believe was around 7:48 that morning.

Subsequently I sent an Email to [T.W.'s COUNSEL] later, a few moments later which, if I'm not mistaken, I don't have the exact time stamp, but it was before Court started and I told her unfortunately the State will be

[5] Neither the State nor the juvenile court addressed Appellant's speedy trial claims.

requesting to have this matter continued due to the arresting officer being unavailable.

I was just notified at 8:13 a.m. that he was sick and unavailable to testify. …

Acknowledging that the case could have been set before expiration of the deadline, but it was not, the State continued:

. . . the State did not have details as to the officer's condition aside from that he was sick.

Obviously this message from my secretary, one was before coming up to Court and that's when I sent the Email to [T.W.'s COUNSEL]. So I don't have the details as to how long he would have been out, didn't have the opportunity to inquire because I was here in Court for that.

And then when I did make the Court aware of the circumstances, and the officer's here today, and he's allowed me to say he did test positive for COVID on that day, so be that as it may, the Court then offered the days of June 22nd as well as June 29th.

[T.W.'s COUNSEL] declined for, her and her client responded that June 22nd was not a good day because of other adjudications that were set that day and based upon her availability, so the matter did get set in on the 29th, which was outside.

The juvenile court interjected:

And, and let me just jump in, so it's really been my policy throughout the pandemic, because you walk this line between asking people for their personal medical information, which I've tried to avoid and I think it's fair to say that we've been encouraged -- I mean if you think about it, we had a questionnaire at the front door for a large part of the pandemic that no one verified, just took people's word for it if someone said I'm sick or I can't get into the building or et cetera.

So I have not pushed for verifications and things like that and, you know, the reality is I, I believe the vast majority of people have been honest when they come to the door, but I've encountered a case or two where the story sort of fell apart.

But it's neither here nor there.

After hearing further argument, including concerns about the dates offered by the court to reschedule adjudication, the court noted that the adjudication hearing would be held on June 29, 2022, or twenty-six (26) days after June 3, 2022, which was the sixtieth (60th) day after the petition was served on April 4, 2022. The court denied the Motion to Dismiss, stating:

> I do think sickness in the era of the pandemic is extraordinary cause.
>
> The case was in front of me. I may have used extraordinary cause and good cause interchangeably, my guess is there was a lot of things going on in here when I had it. I do remember this case because I did offer other dates.
>
> The reality is is the case law really suggests that you not dismiss these cases even if there's a violation of time and the reason is the cases say because it deprives the Respondent, in this case, the opportunity to avail himself of services if they are needed if he's found involved and certainly it's not in the community's best interests.
>
> Certainly I'm not going to dismiss the case where the worst in it could have happened as I used a word good instead of extraordinary.
>
> Maybe I did not count the days or 26 days outside of cause right now.· I do recall that I offered other days.
>
> And just so everyone knows, I offered juvenile days. Part of the reason I offered juvenile days, and I'm not saying it's this attorney here, is that when I offer non-juvenile days, I have the issue of there being people here, sometimes adults for criminal cases, civil cases, and we try, as best we can, to limit the amount of people who are participating, involved, listening to these juvenile cases.
>
> As it relates to the officer, the statute says that I can only dismiss it if actually [sic] prejudice is shown, and none was shown.
>
> Now actual prejudice, to me, means typically a witness testifies and says I would have had so and so here as an expert, this is just an expert – excuse me, alibi, this is just an example, but the case lasted so long and that person's now unavailable because they were moving or whatever the case may be.

So, Madam Clerk, let's deny both Respondent's petitions.

We may include additional detail in the following discussion.

DISCUSSION

Appellant maintains that the juvenile court erred in not granting the motion to dismiss because: (1) based on the delayed forwarding of the complaint from the police to DJS, the State failed to timely file the petition in accordance with the statute; (2) the court did not have extraordinary cause to commence adjudication beyond sixty (60) days; and, (3) his constitutional right to a speedy trial was violated. The State does not respond to the allegations concerning the initial late forwarding of the complaint and filing of the petition but contends that there was extraordinary cause to postpone adjudication for twenty-six (26) days because its primary witness had COVID-19 and Appellant was not prejudiced by this delay, and Appellant was not denied his constitutional right to a speedy trial.

General Juvenile law/Standard of Review

Maryland has adopted "a separate system for juvenile offenders, civil in nature." *In re Caitlin N.*, 192 Md. App. 251, 267 (2010) (quoting *In re Victor B.*, 336 Md. 85, 91 (1994)); *see also In re Areal B.*, 177 Md. App. 708, 714 (2007) ("Juvenile causes are civil, not criminal proceedings") (citation omitted). The Juvenile Causes Act (the "Act"), codified at Md. Code Ann., Cts. & Jud. Proc. §§ 3-8A-01 thru 3-8A-35, "grant[s] jurisdiction in juvenile courts over young offenders and establish[es] the process for treating them, to advance its purpose of rehabilitating the juveniles who have transgressed to ensure that they become useful and productive members of society." *Lopez-Sanchez v. State*, 155 Md. App. 580, 598 (2004) (citation omitted). The Act is to be "liberally

construed to effectuate [its] purposes." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-02 (b). Under the Act,

> juveniles who, in the absence of the juvenile justice system, would be prosecuted in, and punished by, the adult criminal justice system, are instead afforded supervision and treatment, with the aim to achieve rehabilitation. Thus, a juvenile found by the juvenile court to have committed a "delinquent act," that is, an act that, if committed by an adult, would constitute a crime, is adjudicated a delinquent; and in disposition, the court will fashion a plan of supervision, treatment, and rehabilitation appropriate to the juvenile and serving the rehabilitative goals of the Act.

In re Elrich S., 416 Md. at 42 (quoting *Lopez-Sanchez,* 155 Md. App. at 598).

Under Maryland's juvenile justice system, when a police officer takes a minor into custody as a result of alleged conduct that would have been a felony if committed by an adult, the officer must file a complaint with an "intake officer" designated by DJS. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(b). Such complaints are investigated by the intake officer, who may forward the matter to the State's Attorney with authorization to file a petition alleging delinquency. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(c)(1)-(4)(i). The ultimate decision to file a delinquency petition must be made by the State's Attorney after an independent evaluation. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(c)(4)(ii). To ensure juvenile actions are "processed expeditiously," each of these stages is governed by a statutory time limit, so that together, these sequential deadlines establish a strict timeline for bringing a juvenile delinquency complaint. *See In re Anthony R.*, 362 Md. at 59.

In considering such matters, "an appellate court will 'review the case on both the law and the evidence. Md. Rule 8-131(c).' We review any conclusions of law *de novo*[]

but apply the clearly erroneous standard to findings of fact." *In re Elrich S.*, 416 Md. at 30 (citation omitted). Generally, "[t]he hearing court's ultimate decision, however, will not be disturbed unless 'there has been a clear abuse of discretion.'" *In re Elrich S.*, 416 Md. at 30-31 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Delay in Forwarding Complaint

After taking Appellant into custody on December 25, 2021, the police were required to file a complaint stemming from the detention with the designated DJS intake officer "within 15 days[.]" Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(l)(1). Next, the intake officer was obligated, "within 25 days of receiving th[at] complaint," (a) to "make an inquiry . . . as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child," and (b) if he concluded that a delinquency petition was appropriate, to refer the complaint to the State's Attorney with authorization to file such a petition. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(c)(1); § 3-8A-10(c)(3)(i). The juvenile court may only dismiss a petition for failure to comply with this section "if the respondent has demonstrated actual prejudice." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(m).

Thereafter, the State's Attorney, "within 30 days of the receipt of the referral from the intake officer," was required to "make a preliminary review as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(c)(4)(ii). By the end of that same 30-day period, the State's Attorney also was obligated to file the delinquency petition or obtain an extension from the court for good cause. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-

13(b) (A "petition alleging delinquency must be filed within 30 days after the receipt of a referral from the intake officer, unless that time is extended by the court for good cause shown."); *Anthony R.*, 362 Md. at 66; *see also* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10(4)(ii) ("After the preliminary review, the State's Attorney shall, within 30 days of the receipt of the complaint by the State's Attorney, unless the court extends the time to . . . [f]ile a petition"). Because the deadline in Section § 3-8A-13(b) is "mandatory," "[f]ailure to comply with the thirty-day requirement must result in the petition being dismissed, with prejudice." *Anthony R.*, 362 Md. at 66.

Here, Appellant concedes, and there is no dispute, that the State's Attorney filed the juvenile petition within thirty (30) days after the complaint was forwarded from DJS. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-13(b). Appellant proffered in the juvenile court that DJS forwarded the complaint to the State's Attorney thirteen (13) days after it was received from the police, which was within the twenty-five (25) day rule applicable to that specific temporal procedure. *See* Md. Code Ann., Cts. & Jud. Proc. §§ 3-8A-10(c)(1), 3-8A-10(c)(3)(i).

Therefore, for purposes of this issue, we are only concerned with the delay from Saturday, December 25, 2021, *i.e.*, the day Appellant was taken into custody in the vestibule of Atlantic Cycle & Power while in possession of burglar's tools, until the day the complaint was forwarded to DJS by the police. Under Md. Code Ann., Cts. & Jud. Proc. Section 3-8A-10(l)(1), the police had fifteen (15) days, or until January 10, 2022, to forward the charges to DJS. *See generally*, Md. Rule 1-203 (b) (computation of time before a day, act, or event). According to the proffer, the complaint was not filed with DJS until

February 16, 2022, well beyond the 15-day rule. As such, Section 3-8A-10 (l)(1) was violated.

Our inquiry, however, does not end because it was Appellant's burden to prove actual prejudice for that delay. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10 (m).[6] Generally, at least in the constitutional speedy trial context, "prejudice" "has been defined to include not merely an 'impairment of defense' but [also] 'any threat to what has been termed an accused's significant stakes, psychological, physical and financial, in the prompt termination of a proceeding which may ultimately deprive him of life, liberty or property.'" *In re Thomas J.*, 372 Md. 50, 77 (2002) (citation omitted). The Supreme Court has expressly "identified three such interests: (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." *Id*. (quoting *Barker*, 407 U.S. at 532).

In his appellate brief, Appellant does not set forth any specific prejudice with respect to the delayed forwarding of the complaint by the police to DJS. Appellant was released the same day he was taken into custody and processed to his grandmother and there has been no allegation that his defense was impaired by the delay. Most of Appellant's concerns throughout this case relate to the delayed adjudication hearing, discussed *infra*.

[6] Because juvenile matters are civil proceedings, *In re Elrich S.*, 416 Md. at 42-43, we look for guidance in the rules and caselaw governing motions regarding timeliness issues in other civil cases. "As a general rule, the party raising a statute of limitations defense has the burden of proving that the cause of action accrued prior to the statutory time limit for filing the suit. And, in the ordinary situation, defendants will have the burden to both plead and prove the statute as an affirmative defense." *Newell v. Richards*, 323 Md. 717, 725 (1991) (citations omitted). *See also* Md. Rule 2-323(g)(15) (statute of limitations is an affirmative defense in civil actions).

The only statement in his brief arguably related to the delayed forwarding of the complaint is his contention that "T.W. was fourteen and in the eighth grade when he was arrested, and this case followed him for the rest of his academic year, his last in middle school." Standing alone, we are not persuaded this statement constitutes "prejudice," actual or otherwise, at least in the present context. To the extent that the juvenile charges "followed him" and caused some anxiety or concern, we are unpersuaded that this actually prejudiced Appellant to the point where dismissal was an appropriate remedy. *See generally, Glover v. State*, 368 Md. 211, 230 (2002) ("Actual prejudice requires more than an assertion that the accused has been living in a state of constant anxiety due to the pre-trial delay. Some indicia, more than a naked assertion, is needed to support the dismissal of an indictment for prejudice."). Because Appellant has not met his burden, we conclude the juvenile court did not err in denying his motion to dismiss as it related to the delayed forwarding of the initial complaint.

Delay in Adjudication

Next, turning to the adjudicatory hearing, Maryland Rule 11-421, formerly Rule 11-114, now provides: "[a]n adjudicatory hearing shall be commenced within 60 days after the earlier of service of the delinquency petition on the respondent or the entry of appearance of counsel for the respondent." Md. Rule 11-421 (b) (2); *see also* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-18 (Adjudicatory Hearings). Pertinent to our discussion, an adjudicatory hearing may be extended as follows:

> Upon motion made on the record by the petitioner or respondent within the time limits set above, the county administrative judge or a judge designated by the administrative judge may extend the time within which the

> adjudicatory hearing may be held for extraordinary cause shown. The judge shall state on the record the cause that requires an extension and specify the number of days of the extension.

Md. Rule 11-421 (b) (6).

Service of the petition occurred on April 4, 2022, and counsel's first appearance occurred on April 14, 2022, therefore, the sixtieth (60^{th}) day was June 3, 2022. The adjudication was scheduled to commence prior to that, on May 25, 2022, but as recounted above, was postponed because the responding officer called in sick. As set forth above, the court ultimately granted the State's motion to postpone the case, over defense objection, until June 29, 2022.

The issue is whether this extension was supported by "extraordinary cause." Extraordinary cause is a "fact-based determination made on a case by case basis." *In re Ryan S*, 369 Md. 26, 43 (2002). It is "'cause beyond what is ordinary, usual or commonplace; it exceeds the common order or rule and is not regular or of the customary kind.'" *Id*. (quoting *State v. Hicks*, 285 Md. 310, 319 (1979)). "Extraordinary cause means for other than ordinary reasons." *Id*. The Court also explained that "extraordinary cause" is a higher standard than "good cause." *See id.* at 43-44. Specifically:

> The extraordinary cause standard in Rule [11-421] was chosen intentionally and with purpose. The subcommittee on domestic and juvenile rules presented a report to the Rules Committee on the proposed changes to Rule 914b which highlights the basis for the stricter standard. The subcommittee report stated:
>
> > in the opinion of the subcommittee, the standard which would be set by a good cause provision would not be sufficient to preserve the strong public policy which calls for the relatively speedy hearing of juvenile matters. Accordingly, the

> subcommittee recommends that the Rule be amended to include an "extraordinary cause" provision.

Id. at 43-44.

The reason for the higher standard was further explained later in the Court's opinion:

> The petitioner and other juveniles in his position have a right to have timely and continuous adjudication so that a determination can be made, as quickly as possible, as to whether the juvenile is involved or not involved in the alleged delinquent act. This right is of the highest priority because of the explicit guarantee in [Rule 11-421], and in order to ensure that juveniles are given the benefit of all the rehabilitation and treatment options available. *See In re Anthony R.*, 362 Md. at 68, 763 A.2d at 146 (stating that "the overriding goal of Maryland's juvenile statutory scheme is to rehabilitate and treat delinquent juveniles so that they become useful and productive members of society") (quoting [*In re Keith W.*, 310 Md. 99, 106 (1987)]).

In re Ryan S., 369 Md. at 48-49.

The Court continued:

> Interestingly, the Rules Committee itself initially declined to accept the subcommittee's extraordinary cause standard, and instead selected a good cause standard with the caveat that the Rule would expressly state that certain matters do not constitute good cause. The proposed Rule stated, "[f]or the purposes of this rule, the general congestion of the court's calendar or failure to obtain available witnesses on the part of the petitioner shall not constitute good cause." Maryland Rules Committee Notes, Domestic and Juvenile Subcommittee (October 16 and October 17, 1981). Ultimately, the Rule was adopted with an extraordinary cause standard, yet we find it significant that even under a good cause standard, the Committee was unwilling to allow court congestion to be the basis for an extension of the time limits for a juvenile's adjudicatory hearing as prescribed by the Rule.
>
> Without a more compelling reason, overcrowded dockets do not constitute, and never have constituted, "extraordinary cause." *See e.g.* [*State v. Frazier*, 298 Md. 422, 458 (1984)] (stating that when "extraordinary cause," contrary to "good cause" was required for postponement of a criminal case, "it was arguable that, as a matter of law, overcrowded dockets did not constitute sufficient cause for a postponement").

In re Ryan S., 369 Md. at 44.

In re Ryan S. does not precisely set forth a standard of review of the "extraordinary cause" determination. Notably, although an unavailable witness was mentioned in the earlier versions of the rule under the proposed "good cause" standard, *see id.*, our Supreme Court's holding was limited to concluding that overcrowded dockets are not an "extraordinary cause" as a matter of law. Beyond this, we have not found, nor have the parties cited, a case setting forth the standard of review on appeal of a court's determination that there was "extraordinary cause" for a postponement of a juvenile adjudication.

Appellant suggests that it is an abuse of discretion standard. *See generally, Kusi v. State*, 438 Md. 362, 385 (2014) (defining "abuse of discretion"). Indeed, in other cases involving postponements, albeit in the context of "good cause" determinations, we have applied such a standard. *See generally, State v. Hicks*, 285 Md. 310 (1979); Md. Rule 4-271; Md. Code Ann., Crim. Proc. § 6-103; *see also Howard v. State*, 440 Md. 427, 441 (2014) ("An appellate court reviews for abuse of discretion a trial court's ruling on a motion to postpone."); *Ashton v. State*, 185 Md. App. 607, 620 (2009) (stating, in the *Hicks* case: "We review the court's good cause finding for a clear abuse of discretion or a lack of good cause as a matter of law") (citing *State v. Frazier*, 298 Md. 422, 454 (1984)). The other possibility is that the standard of review is similar to the one applied to mixed questions of law and fact. In those instances, "we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law." *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009) (citations omitted).

Although we tend to favor the mixed question standard of review given that "extraordinary cause" appears to be a higher, more fact-intensive threshold than "good cause," we conclude in this case that, under either standard, the juvenile court did not err in postponing the adjudication. On the morning of the originally scheduled adjudication, the State learned the officer "had called out sick, saying that he was unavailable and could not testify." As the State concedes in its appellate brief, "it would undoubtedly have been preferable to obtain more detailed information in deciding how to proceed." Nevertheless, as the juvenile court stated, "this is in [the] age of the pandemic [,] people calling in sick," and required, in the court's view, that "I have to sort of treat it a little bit differently[.]" It was later undisputed that the officer was diagnosed with COVID-19 when the adjudication was postponed. *See generally*, *Com. Union Ins.*, 116 Md. App. at 643 ("[C]ounsel's word is counsel's bond unless there is something to the contrary that the opponent can bring in").

As noted earlier, although the COVID-19 emergency as to the Maryland Judiciary was lifted two months earlier, see https://www.mdcourts.gov/coronavirusorders, concerns about the pandemic lingered. Indeed, as explained by our Supreme Court:

> Everyone above a very young age is conscious of the COVID-19 pandemic - the worst public health crisis in a century - that suddenly and pervasively altered life worldwide during the past two years. For future readers of this opinion on the other side of the pandemic, the history books will provide the details. For now, it suffices to say that the pandemic upended the patterns, rituals, and timelines of daily life - how one worked, shopped, played, and prayed; where one went; when and how one met with others; who was present for births, deaths, and the major life events in between. Mandated vaccination, self-testing for the disease, masking, and "social distancing" became commonplace and, on occasion, controversial.
>
> Some of the most drastic measures were taken in the early days of the pandemic during the spring of 2020 when its virulence was unknown, and

> the medical tools to combat it - vaccination and treatment - were a hope rather than a certainty. Government offices were closed, "non-essential" businesses were shuttered, stay-at-home orders were issued, and personal interaction of any sort was viewed as risky. At that time, a federal judge in Maryland, who was presiding over a case concerning anti-COVID-19 measures required to protect inmates at a local detention center, alluded to grim statistics on the spread of the virus and the resulting deaths and "struggle[d] to put into words the magnitude of COVID-19's devastation."
>
> The tide began to turn in early 2021 as vaccines became available. There were further advances and retreats as variants of the virus emerged, proliferated, and dissipated. People are resilient and have adapted, but adaptation takes time. The story of COVID-19 is not yet over, but this account is sufficient for purposes of this opinion.

Murphy v. Liberty Mut. Ins. Co., 478 Md. 333, 350-51 (2022) (footnote omitted).

We are persuaded that, under the circumstances of this case, the court was not clearly erroneous in its findings with respect to Officer Burbank's illness, nor did it err as a matter of law and/or abuse its discretion in finding extraordinary cause to postpone adjudication beyond sixty (60) days. Moreover, even were we to conclude otherwise, we would not conclude that dismissal was warranted. Even in *In re Ryan S.*, our Supreme Court observed that "mandatory dismissal of juvenile petitions was not the required solution" to violations of the rule. *In re Ryan S.*, 369 Md. at 50. "[O]nly the most extraordinary and egregious circumstances should be allowed to dictate dismissal as the sanction for this violation of a procedural rule." *In re Timothy C.*, 376 Md. 414, 434 (2003) (quoting *In re Keith W.*, 310 Md. 99, 109 (1987)). This is so because "the overriding purpose of the juvenile statute 'will ordinarily not be served by dismissal of the juvenile proceeding.'" *Id*. at 434-35. "Neither the juvenile nor society should be denied the benefits of the juvenile's rehabilitation because of a technical violation" of the rule's "scheduling

requirements." *In re Caitlin N.*, 192 Md. App. 251, 270 (2010) (quoting *In re Keith W.*, 310 Md. at 109).

We are guided by *In re Keith W*. There, adjudication was postponed beyond sixty (60) days due to the unavailability of the State's witness. *In re Keith W.*, 310 Md. at 100-01. Keith W. subsequently argued the juvenile petition should be dismissed for violation of the statutory time deadlines. *Id*. at 101. On certiorari review, the State, conceding the violation of the rule and that there was no extraordinary cause for the postponement, argued dismissal was an inappropriate sanction under the circumstances. *Id*. at 102. The Supreme Court of Maryland, agreed with the State, concluding that dismissal is not a standard or routine sanction.

> As we see it, the foremost consideration in the disposition of a juvenile proceeding should be a course of treatment and rehabilitation best suited to promote the full growth and development of the child. Only the most extraordinary and egregious circumstances should be allowed to dictate dismissal as the sanction for this violation of a procedural rule. Thus, in determining whether dismissal is an appropriate sanction for a violation of Rule 914, a judge presiding over a juvenile cause should examine the totality of the circumstances as required by Rule 1-201. In doing so, the judge must keep in mind the overriding purpose of the juvenile statute along with the fact that this purpose will ordinarily not be served by dismissal of the juvenile proceeding. Neither the juvenile nor society should be denied the benefits of the juvenile's rehabilitation because of a technical violation of Rule 914's scheduling requirements. Nevertheless, we do not foreclose the possibility that under some circumstances dismissal will be a proper sanction. However, we find no such circumstances in the present case. Accordingly, [the juvenile court's] refusal to dismiss the petition was entirely appropriate.

In re Keith W., 310 Md. at 109-10; *accord In re Caitlin N.*, 192 Md. App. at 269-70.

We reach a similar conclusion here. Officer Burbank was the responding officer who encountered Appellant when he was caught in the vestibule of Atlantic Cycle & Power

with burglar's tools. It is undisputed that the officer was prepared to testify at the originally scheduled adjudicatory hearing but was unable to do so after testing positive for COVID-19 that morning. Appellant was offered several dates by the court, including, June 8th, June 22nd, and June 29th. Appellant rejected the first two options and choose June 29, 2022. This was twenty-six (26) days beyond the statutory deadline. Although we agree this was a violation of Maryland Rule 11-421 (b) (2), as explained earlier, we are not persuaded Appellant was actually prejudiced by this delay.

Appellant was offered several dates for a rescheduled adjudicatory hearing, and there was no evidence the postponement in this case was due to overcrowded dockets or "long and repeated postponements over objection for no reason specific to the case itself," *see In re Ryan S.*, 369 Md. at 48 n. 16, we, thus, conclude that his reliance on *In re Ryan S.* is misplaced. We further note Appellant's argument challenging the juvenile court's "prophylactic practice" of keeping juvenile and adult matters separate when it came to scheduling was not raised below and is not properly presented on appeal. *See generally, Hartman v. State*, 452 Md. 279, 299 (2017) ("[O]ur review of arguments not raised at the trial level is discretionary, not mandatory"). The court properly denied the motion to dismiss on the grounds set forth by statute and rule.

Sixth Amendment

Due process requires "that juveniles be afforded a speedy trial." *In re Thomas J.*, 372 Md. 50, 70 (2002). We consider the following four factors when evaluating an accused person's right to a speedy trial: "(1) the length of the delay; (2) the reason for the delay; (3) the assertion of the right to a speedy trial by the accused; and (4) the prejudice to the

accused resulting from the delay." *Id.* at 72 (citing *Barker*, 407 U.S. at 530). Once delay is established, none of these factors, on its own, is "'a necessary or sufficient condition,'" but rather, these factors are related and "'must be considered together with such other circumstances as may be relevant.'" *Id.* at 72-73 (quoting *Divver v. State*, 356 Md. 379, 394 (1999)).

An appellate court reviews the circuit court's conclusion regarding a defendant's alleged violation of a constitutional right to a speedy trial without deference. *Phillips v. State*, 246 Md. App. 40, 55 (2020); *see also Howard*, 440 Md. at 446-47 ("An appellate court reviews without deference a trial court's conclusion as to whether a defendant's constitutional right to a speedy trial was violated") (citing *Glover*, 368 Md. at 220). In conducting that assessment, however, we defer to the motion court's findings of fact, unless clearly erroneous. *Phillips*, 246 Md. App. at 55.

Here, Appellant was arrested on December 25, 2021, and the adjudication was held 186 days later, on June 29, 2022. This delay arguably would not be considered "presumptively prejudicial" to meet the threshold in adult criminal cases. *See Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992) (noting that delays approaching one year are often deemed "presumptively prejudicial"); *see also Tapscott v. State*, 106 Md. App. 109, 125 (1995) (concluding that a case which came to trial "a few days beyond seven months" was not a delay of constitutional dimension), *aff'd on other grounds*, 343 Md. 650 (1996); yet such a delay in a juvenile case may mean all the difference:

> The imposition of legal sanctions is essentially an attempt to teach offenders that illegal behavior has consequences and that anyone who violates the law will be held accountable. In order to deliver this message effectively, the

> juvenile court process must fit the unique learning style of adolescents. During the years of adolescence, young people experience many developmental changes, and the passage of time is often accelerated - for example, three months of summer vacation may seem like an eternity to a fourteen-year-old. If the juvenile court takes too long to respond to youthful misbehavior, the corrective impact of the court process may be greatly curtailed.

In re: Thomas J., 372 Md. at 75-76 (quoting Jeffrey A. Butts, *Speedy Trial in the Juvenile Court*, 23 Am. J. Crim. L. 515, 525 (1996)).

Appellant raised his constitutional speedy trial claim in the juvenile court both in writing and during the hearing. Neither the State nor the court argued that claim and the juvenile court addressed Appellant's motion to dismiss only as it is applied to Rule 11-421. The court did not conduct the *Barker* analysis, and therefore, it failed to make factual findings on each of the prongs of the requisite four-factor analysis. Although it is arguable that, under our independent constitutional standard of review, we could consider the speedy trial claim, we conclude the better course is to remand this case to the juvenile court so that it may consider Appellant's constitutional claim and make clear findings on the record in that regard. *See State v. Holley*, 82 Md. App. 381, 390 (1990) (holding that because a factual determination by the motions' judge with respect to the speedy trial issue was omitted, it is remanded for further consideration).

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED, IN PART, AND VACATED, IN PART.

CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY CHARLES COUNTY.