Circuit Court for Howard County
Case No.: C-13-CR-22-000079

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1612

September Term, 2022

MICHAEL CARROL

v.

STATE OF MARYLAND

Friedman
Zic
Curtin, Yolanda L.
(Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: March 5, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On February 17, 2021, Appellant, Michael Carrol, was charged in the District Court of Maryland for Howard County, with second-degree assault. Approximately a year later, on February 8, 2022, Mr. Carrol requested a jury trial, and the case was transferred to the Circuit Court for Howard County. On April 11, 2022, Mr. Carrol appeared at a hearing in the circuit court and asked for the assistance of counsel. Three days later, on April 14, 2022, an assistant public defender entered an appearance on Mr. Carrol's behalf and requested a speedy trial *via* a general one-line motion for a speedy trial. Approximately five months later, at a hearing on September 19, 2022, Defense Counsel orally moved to dismiss for violation of Mr. Carrol's speedy trial rights, which was followed by written motion on September 21, 2022. On October 6, 2022, almost 20 months after he was charged with second-degree assault, the circuit court denied Mr. Carrol's motion to dismiss for lack of a speedy trial. That same day, Mr. Carrol entered a not-guilty plea on an agreed statement of facts, was found guilty of second-degree assault, and was sentenced to 349 days with credit for time served. On this timely appeal, Mr. Carrol asks us to determine whether the circuit court erred in denying his motion to dismiss. For the following reasons, we shall reverse.

BACKGROUND

Our summary of the trial record is intended to provide context for the issue raised in this appeal, rather than a comprehensive review of the evidence presented. *Parks v. State*, 259 Md. App. 109, 113 (2023) ("Because the issue in this appeal is purely a procedural one, we dispense with a detailed recitation of the underlying crime."). *Accord*

Thomas v. State, 454 Md. 495, 498-99 (2017). The sole issue concerns the circuit court's denial of Mr. Carrol's motion to dismiss on speedy trial grounds.

Motion to Dismiss with Prejudice for Lack of Speedy Trial

As will be discussed in more detail, almost 20 months after he was charged in the District Court with second-degree assault, and after a number of failed attempts to transport him to court while in State custody at either Clifton T. Perkins Hospital Center ("Perkins") or Baltimore City Central Booking ("Central Booking"), the Circuit Court for Howard County denied Mr. Carrol's Motion to Dismiss with Prejudice for Lack of Speedy Trial, finding as follows:

> All right, thank you. All right, before the Court is the Motion to Dismiss the indictment -- the charging document in its entirety for a violation of Mr. Carrol's constitutional speedy trial. The Court has considered the arguments both in writing as well as the arguments here presented. And when we look at the length of the delay and the question is do I consider or count what I would say the preservice delay, of the charges on Mr. [Carrol]. The charges were filed February 17, 2021. There was an attempt to get him to Court a number of times. And from what [Defense Counsel] said it was at least seven times before he was actually brought in December of 2021. Which is when the summons was served.
>
> So, in a sense Mr. Carrol was not even aware of these charges since he was not served with these charges. He was given his advice of rights; he was given a February trial date. When he came in February, he exercised his right to a jury trial the case was subsequently transferred to the Circuit Court with the first trial date being March 14th of 2022. He was not transported by then. Then we actually were able to get -- then they kicked the can [down] the road for two weeks. He was still not produced again. Then on his first appearance in Circuit Court was April 11, 2022. Which from the analysis that would be a 14 month quote delay. I don't see it as being that.

I do say -- I do find that preservice delay would be somewhat on the neutral side because there were a number of attempts to try to get him here. It also sounds to this Court that they weren't sure where he is because if you know where he is you going to issue. Because there was the one entry it was four different locations, they were issuing writs to. To me, as I said, although [Defense Counsel] disagrees with me, you don't know -- you're not sure where he is because you can't just pick up the phone and say, get him here, bring him here wherever if you're issuing a writ for four separate places.

But it is somewhat offensive when you look at this case here in the Circuit Court and the number of times he was not produced from either Perkins or Baltimore City. I find that to be problematic. But when looking at the analysis of the length of the delay I don't find it overly egregious. What I do find egregious is the number of attempts with a failure of [the Department of Corrections ("DOC")] to bring him to Court or the transport people to get him here. But the length of delay I do not find egregious. I'm going to say the assertion of the right, [Prosecutor] said it wasn't until September. I don't see where and I've not gone through every docket where they -- somebody may have mentioned the speedy trial it may be common practice, but I can't say for certain that it wasn't raised prior to September.

But to give the benefit I'll say it was done April 11th he asked for a speedy trial or April 25th when [Prior Defense Counsel] was involved in this. So, I would say it was asserted back then. So, looking at the delay since he was asserted, I don't find that overly egregious or overly offensive so would not be denied on that. Whether or not there is actual prejudice, I don't find that there's prejudice can be inferred in this matter at all. I don't see where there's been any actual prejudice. No one has said there was actual prejudice the victim maybe as I said, I erroneously thought it was an employee but it's another patient and that person is readily available. I don't -- haven't heard that there were any other witnesses that they cannot locate, or evidence has been lost or whatever. The State has the -- the alleged victim in this matter and they are available. And I haven't heard any other prejudicial arguments by the defense.

> So, in considering the arguments I don't find where there's been any constitutional violation of speedy trial. Therefore, the Motion to Dismiss is going to be denied.[1]

Not guilty plea on an agreed statement of facts

Immediately thereafter, the court found that Mr. Carrol made a knowing, intelligent, and voluntary waiver of his right to a jury trial. The prosecutor then read the following agreed statement of facts:

> Your Honor, on August 1, 2020, the Defendant, Michael Carrol, seated to my right with defense counsel, and the victim, Charles Bassey for [sic] patients at Clifton T. Perkins hospital. The victim was doing laundry when the Defendant entered the laundry and asked whether his clothes were in the washer. The Defendant then asked if the victim['s] clothes were in the washer. The victim stated they were, and the Defendant then punched the victim in the head several times. Mr. Tori, a staff member at the hospital, witnessed the Defendant striking the victim in the head several times. If called to testify the victim as well as Mr. Tori would identify this Defendant as the individual who did strike the victim without his consent in the head several times. And all this did occur in Howard County, State of Maryland.

We shall include additional detail in the following discussion.

DISCUSSION

Mr. Carrol contends that the trial court erred in denying his motion to dismiss for a lack of speedy trial. The State disagrees. The question presented concerns Mr. Carrol's constitutional right under the Sixth Amendment to the United States Constitution,[2] and

[1] The court also denied Mr. Carrol's motion to the extent it raised issues under *State v. Hicks*, 285 Md. 310 (1979); *see also* Md. Rule 4-271; Md. Code Ann., Crim. Pro. § 6-103. That issue is not before us.

[2] Mr. Carrol makes no argument that his speedy trial rights violated Article 21 of the Maryland Declaration of Rights.

requires we consider that claim under the balancing test set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972) and its progeny. *See State v. Kanneh*, 403 Md. 678, 687 (2008); *Divver v. State*, 356 Md. 379, 388 (1999).

In *Barker*, the Supreme Court "rejected a bright-line rule to determine whether a defendant's right to a speedy trial had been violated, and instead adopted 'a balancing test, in which the conduct of both the prosecution and the defendant are weighed.'" *Kanneh*, 403 Md. at 687-88 (citing *Barker*, 407 U.S. at 530). Accordingly, there are four factors to be used in determining 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 688 (quoting *Barker*, 407 U.S. at 530). None of these factors are "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." *Kanneh*, 403 Md. at 688 (quoting *State v. Bailey*, 319 Md. 392, 413-14, *cert. denied*, 498 U.S. 841 (1990), in turn quoting *Barker*, 407 U.S. at 533). The sole remedy for a violation of the speedy trial right is dismissal of the prosecution. *Strunk v. United States*, 412 U.S. 434, 440 (1973).

Length of Delay

"For speedy trial purposes the length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial." *Divver*, 356 Md. at 388-89 (citation omitted). Typically, "[t]he speedy trial clock starts ticking when a person is arrested or when a formal charge is filed against him." *Bailey*, 319 Md.

at 410; *see also Greene v. State*, 237 Md. App. 502, 512-13 (2018) ("The length of delay for speedy trial analysis is measured from the earlier of the date of arrest, filing of indictment, or other formal charges, to the date of trial.") (citing *United States v. Marion*, 404 U.S. 307, 320-21 (1971)); *see also In re Thomas J.*, 372 Md. 50, 73 (2002).

Moreover, the length of the delay "is necessarily dependent upon the peculiar circumstances of the case." *Kanneh*, 403 Md. at 689 (quoting *Barker*, 407 U.S. at 530-31). Indeed, "the delay that can be tolerated is dependent, at least to some degree, on the crime for which the defendant has been indicted." *Id*. (quoting *Glover v. State*, 368 Md. 211, 224 (2002)).

Here, the length of delay was 596 days, or approximately one year, seven months, and 19 days. We conclude that delay is substantial, presumptively prejudicial, and of constitutional dimension. *See Doggett v. United States*, 505 U.S. 647, 652 n .1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); *Lloyd v. State*, 207 Md. App. 322, 329 (2012) (addressing the three remaining *Barker* factors where the eight-month and fifteen-day delay "'might' be construed as presumptively prejudicial and of constitutional dimension"), *cert. denied*, 430 Md. 12 (2013); *see also Hogan v. State*, 240 Md. App. 470, 501-05 (distinguishing between the threshold determination that a delay is presumptively prejudicial and of constitutional dimension and the "length of delay" as one of the four *Barker* factors), *cert. denied*, 464 Md. 596 (2019).

Reasons for Delay

All reasons for delay are not considered the same. Some carry greater weight than others:

> Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government. A more neutral reason such as negligence or overcrowded 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 the defendant.

Barker v. Wingo, 407 U.S. at 531; *see also Doggett*, 505 U.S. at 652 (according "considerable deference" to trial court's findings regarding reasons for delay).

Under the second *Barker* factor, we look to the reasons for the delay and which party bears responsibility for them. *Vermont v. Brillon*, 556 U.S. 81, 90-91 (2009). This factor is "[t]he flag all litigants seek to capture." *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986). "[D]ifferent weights should be assigned to different reasons," with things such as deliberate attempts by the prosecution "to hamper the defense" weighing heavily against the government and "delay caused by the defense weigh[ing] against the defendant." *Brillon*, 556 U.S. at 90 (cleaned up). "In considering this factor, we . . . address each postponement of the trial date in turn." *Kanneh*, 403 Md. at 690.

I. DISTRICT COURT PROCEEDINGS (D-101-CR-21-000200)[3]

Chronology and Arguments in the District Court

February 17, 2021 – Criminal Summons on Charging Document. District Court Trial Date set for April 13, 2021.

March 29, 2021 (*40 days*)[4] – Writ of Habeas Corpus ("Writ") issued to Clifton T. Perkins Hospital Center ("Perkins") for trial on April 13, 2021.[5]

March 31, 2021 (*2 days*) – Summons on charging document returned unserved.

April 13, 2021 (*13 days*) – First Scheduled Trial date. Mr. Carrol not present. Trial reset. Writs to Baltimore County and Baltimore City issued for June 11, 2021.

June 11, 2021 (*59 days*) – Trial/Hearing. Mr. Carrol not present. Trial reset. Writ to Baltimore County Detention Center for August 10, 2021.

August 10, 2021 (*60 days*) – Trial/Hearing. Mr. Carrol not present. Trial reset. Writ to Perkins for October 7, 2021. Requested writ to Spring Grove Hospital Center ("Spring Grove") [6] for October 7, 2021. (State proffered that Mr. Carrol found

[3] We take judicial notice of the District Court proceedings as reflected on the Maryland Electronic Courts website. *See generally* Md. Rule 5-201 (rule of judicial notice); *Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) (taking judicial notice of docket entries available on Maryland Judiciary website), *aff'd on other grounds*, 452 Md. 663 (2017).

[4] The days in parentheses are calculated based on the number of days since the prior bolded date.

[5] Perkins is "Maryland's maximum-security forensic psychiatric hospital." *Clifton T. Perkins Hospital Ctr.*, MD. DEP'T OF HEALTH, https://health.maryland.gov/perkins/Pages/home.aspx (last visited Feb. 20, 2024), archived at https://perma.cc/W3DL-44W9.

[6] Spring Grove Hospital Center ("Spring Grove") "provides a broad spectrum of inpatient psychiatric services to adults and adolescents, as well as comprehensive

(continued)

incompetent to stand trial in an unidentified, pending Baltimore City case and remanded back to Department of Health custody).[7]

October 7, 2021 (*58 days*) – Status hearing. Mr. Carrol not present. Reset. Unsigned comments sheet suggests writs issued to Baltimore City, Baltimore County and Spring Grove Hospital but no writs issued according to the record.

October 22, 2021 (*15 days*) – Status hearing. Mr. Carrol not present. Reset. Writ to Baltimore City Central Booking & Intake Center ("Central Booking") for November 23, 2021.[8]

November 23, 2021 (*32 days*) – Trial. Mr. Carrol not present. Reset. Writ to Spring Grove and Perkins for December 16, 2021.

December 16, 2021 (*23 days*) – Trial. Mr. Carrol not present. Reset. Writ to Central Booking for December 23, 2021.

December 23, 2021 (*7 days*) – Trial. Mr. Carrol present. First appearance in District Court. Criminal Summons served. Mr. Carrol advised of rights. Committed to Howard County Detention Center and reset for February 8, 2022.

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psychiatric services to adults." *Spring Grove Hospital Ctr.*, MD. DEP'T OF HEALTH, https://health.maryland.gov/springgrove/Pages/home.aspx (last visited Feb. 20, 2024), archived at https://perma.cc/B6QP-J2U6.

[7] Although there was an indication that Mr. Carrol was deemed incompetent in one pending case, at no point in the district or circuit court was incompetency raised or explored.

[8] Central Booking is a facility run by the Maryland Department of Public Safety and Correctional Services and houses adult offenders. *See Baltimore Booking & Intake Ctr.*, MD. DEP'T OF PUB. SAFETY AND CORR. SERVICES, https://www.dpscs.state.md.us/locations/bcbic.shtml (last visited Feb. 20, 2024), archived at https://perma.cc/95RJ-9VUR.

February 8, 2022 (*47 days*) – Trial. Mr. Carrol present. Mr. Carrol requested a jury trial. Settlement hearing in Circuit Court scheduled for March 14, 2022. Mr. Carrol committed to Howard County Detention Center, writs to Howard County Detention Center and Central Booking; Notices of Hearing/Trial sent to Mr. Carrol's home address issued for March 14, 2022.

II. CIRCUIT COURT PROCEEDINGS (C-13-CR-22-000079)[9]

Chronology and Arguments in the Circuit Court

March 14, 2022 (*34 days*) – Settlement hearing, Mr. Carrol not present. Comment on hearing sheet indicates Mr. Carrol not transported from Perkins due to medical issues. Writ to Perkins for rescheduled settlement hearing for March 28, 2022.[10]

[9] There is no indication in the record that a trial date was timely set in the circuit court, either after the case was transferred from the District Court or after the first appearance of Mr. Carrol or his attorney of record, as required by Maryland Rule 4-271(a). Indeed, the first reference to a specific "trial" date in the record appears in the Release from Commitment, which was filed the same day Mr. Carrol: (1) entered his not guilty plea on the agreed statement of facts; and, (2) was sentenced. We note that, at around this time, the Maryland Judiciary was operating in Phase III emergency operations, pursuant to the Extension of the Interim Administrative Order of December 27, 2021, due to the omicron variant of the coronavirus. *See COVID-19 Administrative Orders*, MD. COURTS, https://www.mdcourts.gov/coronavirusorders (last visited Feb. 6, 2024), archived as https://perma.cc/HCE8-WJEX. *See also Murphy v. Liberty Mut. Ins. Co*., 478 Md. 333, 351-63 (2022) (describing the effect of the COVID pandemic on Maryland courts and the administrative orders issued by the Chief Justice of the Supreme Court in response to the pandemic). We also note, however, that Mr. Carrol never objected to the failure to set a trial date and, in fact, acquiesced when the State suggested not setting a trial date until after resolution of Mr. Carrol's motion to dismiss for lack of speedy trial.

[10] It is unclear when Mr. Carrol was transferred from the Howard County Detention Center to Perkins. On or around February 10, 2022, the Howard County Detention Center informed the court that Mr. Carrol was not in their custody. That same (continued)

March 28, 2022 (*14 days*) – Settlement hearing, Mr. Carrol not present, not transported from Perkins for unknown reasons. Rescheduled and writ to Perkins for April 11, 2022.

April 11, 2022 (*14 days*) – Mr. Carrol's First Appearance in Circuit Court. Asked for the assistance of the Public Defender. Postponed and writ to Department of Corrections, Baltimore ("DOC") issued for April 25, 2022.

April 14, 2022 (*3 days*) – Public Defender's First Appearance on behalf of Mr. Carrol; filed, *inter alia*, a general one-line motion for a speedy trial. Notices of Hearing/Trial to Mr. Carrol's home address, Howard County Public Defender, Howard County State's Attorney, Defense Counsel for April 25, 2022 settlement hearing.

April 25, 2022 (*11 days*) – Settlement hearing, Mr. Carrol not present, not transported from Perkins. Rescheduled and writ to Perkins for May 16, 2022.[11]

May 16, 2022 (*21 days*) – Settlement hearing, Mr. Carrol not present, not transported from Perkins. Defense Counsel asks, "[C]an I move for speedy trial at this point[?]" and the court replied that counsel needed to put such a motion in writing. The court also observed, "this is not the first time that there's been problems with Perkins." Case rescheduled to June 27, 2022 for another settlement hearing. Writ to Perkins for June 27, 2022.

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day, a writ was issued to Central Booking and a Notice of Hearing/Trial was sent to Mr. Carrol's home address.

[11] Although the parties discussed issuing an additional writ to DOC during the hearing, there is no writ to that effect in the appellate record.

June 23, 2022 (*38 days*) – Assistant Public Defender advised criminal clerk for Circuit Court for Howard County that Mr. Carrol is incarcerated at Central Booking. Writ to Central Booking for June 27, 2022 settlement hearing.

June 27, 2022 (*4 days*) – Settlement hearing, Mr. Carrol not present because he was "not psychiatrically stable and was unable to be transported" from Central Booking. Rescheduled and writ to Central Booking and Notice of Hearing/Trial to Mr. Carrol's home address for July 11, 2022.

July 11, 2022 (*14 days*) – Settlement hearing, Mr. Carrol not present, not transported from Central Booking. Rescheduled to August 22, 2022, and writ to Central Booking.

August 22, 2022 (*42 days*) – Settlement hearing, Mr. Carrol not present, not transported from Central Booking. Court advised that Mr. Carrol "currently being held on a violation of probation in Baltimore City Drug Court." Rescheduled to September 19, 2022, and writ to Central Booking, with writ including, for first time, Mr. Carrol's State Identification Number (SID).[12]

[12] "The [State Identification Number ("SID")] is a unique identifier issued by the Maryland Criminal Justice Information System (CJIS) Central Repository. A SID number is assigned to every individual who is arrested or otherwise acquires a criminal history record in Maryland[.]" *Bryant v. State*, 436 Md 653, 657, 657 n.1 (2014) (quoting *State v. Dett*, 391 Md. 81, 85 (2006)). Although the parties discussed sending an additional writ to the Metropolitan Transition Center ("MTC"), there is no writ to that effect in the appellate record. *See generally Metropolitan Transportation Center,* MD. DEP'T OF PUB. SAFETY AND CORR. SERVICES, https://www.dpscs.state.md.us/locations/mtc.shtml (last visited Feb. 20, 2024), archived at https://perma.cc/G3RQ-VMRT.

September 19, 2022 (*28 days*) – Settlement hearing. Mr. Carrol not present. Defense Counsel informed the court, to the court's apparent surprise, that this was the ninth settlement hearing in this case, and that Mr. Carrol was located in Central Booking.[13] Based on this, Defense Counsel moved, orally in open court, to dismiss on speedy trial grounds. The State responded that it believed Mr. Carrol was located in Perkins, not Central Booking, and requested another postponement. At that point, the court clerk called Perkins and ascertained that Mr. Carrol was, in fact, located at Perkins. The court then said Defense Counsel's motion may have some merit but decided not to rule on it that day and requested counsel to file a written motion. The State then informed the court that the victim still wanted to pursue charges against Mr. Carrol. Rescheduled to September 26, 2022, writ to Central Booking.[14]

September 21, 2022 (*2 days*) – Mr. Carrol filed a written Motion to Dismiss with Prejudice for Lack of Speedy Trial. Mr. Carrol recognized that he was already incarcerated at Perkins when the alleged assault occurred, but that: the length of delay in

[13] Defense Counsel stated: "[H]e's not at Perkins anymore, he's at Baltimore City Detention Center – sorry, [C]entral [B]ooking. That is what VINELink says." According to its website, "VINE is a free, secure, and confidential way to access custody status and criminal case information. Register for notifications and stay informed." *Maryland Vine*, https://vinelink.vineapps.com/state/MD/ENGLISH (last visited Feb. 20, 2024), archived at https://perma.cc/4J6L-HNT3.

[14] Although the parties discussed issuing an additional writ to Perkins during the hearing, there is no writ to that effect in the appellate record. We also note the State informed the court at this hearing that the victim was a nurse at Perkins. This stands in contradiction to the victim's apparently handwritten report in the Application for Statement of Charges, which appears to indicate the victim was, in fact, another patient at Perkins.

this case, at this time, exceeded one year and seven months; he had only been transported to circuit court one time; he had asserted his right to a speedy trial; and that, although the delay was not deliberate, it occurred "while he was in State custody [at either Perkins or the Department of Corrections] with no means of bringing himself to court."

September 26, 2022 (*5 days*) – Settlement hearing, Mr. Carrol present. Rescheduled for motions on October 6th. Mr. Carrol personally acknowledged he was in custody at Perkin and signed notice of motions hearing. Writ to Baltimore Central Booking for 10/06/22.

October 6, 2022 (*10 days*) - Mr. Carrol present. Defense Counsel moved to dismiss for lack of a speedy trial. Counsel recited the facts as contained herein, suggested that the delay was one year, seven months, and twenty days, and addressed the reason for delay as follows:

> So, between District Court and Circuit Court Mr. Carrol has failed to be transported 15 separate times. He has moved around some, I read through the Judges[']s notes from the District Court and Circuit Court. He's currently in Perkins he's been in Perkins, and he's been back and forth between DOC and the city as he does have -- I believe it's been closed now but for a long time had a mental health case in the city's mental health ward. But many times, and I can even see in the record that once Judges and counsel realized this, everybody was asking for Writs to just be issued everywhere. Because it got to the point that we didn't know where Mr. [Carrol] I think, going to be at any given time. Back in June [the Prosecutor] and I discussed this on the phone. [The Prosecutor] had confirmed at that time that Mr. Carrol was in central booking in Baltimore City. But he has since been taken back to Perkins. There's so much back and forth.
>
> But the fact of the matter is this entire time Mr. Carrol has been in State custody and the State have [sic] the responsibility to bring him to Court.

Defense Counsel concluded:

> So, the reason for the delay has been no fault to Mr. [Carrol] it's been the State's since he's been in the State custody the entire time. I have asserted his right to a speedy trial on his behalf when he was not present. Counsel from my office prior to my entering the case has asserted that right for him. And he's been greatly -- he's been prejudiced by this delay. The mental anxiety of having this case hanging over him not knowing what's happening with it, and not even being able to come to Court to advocate for himself because he's not being brought.
>
> Your Honor, the proper remedy for violation of a Defendant's speedy trial right, is a dismissal of the case in its entirety. And this length of time -- the 15 times, seven District Court and eight in Circuit Court he wasn't transported. Even though Writs were issued to multiple locations where he had been held. That is a denial of his right to a speedy trial, and I ask that, Your Honor, grant the motion and dismiss this case. Thank you.

Before hearing from the State, the motions court accepted Defense Counsel's proffer as to the proceedings in District Court, and then recounted the numerous hearings in the circuit court. The court observed that approximately five different prosecutors had been involved in this case. Noting that *Hicks*, which requires defendants to be tried within 180 days of their, or their defense counsel's, first appearance in that court, was set to expire just two days after this hearing, the court repeatedly inquired why the case had not been set for trial, and whether, should it deny the motion to dismiss, it could still find good cause to delay this case any further past the *Hicks* date.[15]

[15] *State v. Hicks*, 285 Md. 310 (1979); *see also* Md. Rule 4-271; Md. Code (2001, 2018 Repl. Vol.), § 6-103 of the Criminal Procedure Article. To reiterate, *Hicks* is not at issue in this appeal.

As part of its argument, the State suggested that the length of delay was to be measured from Mr. Carrol's first appearance in circuit court, *i.e.*, March 14, 2022, and that the delay between that day and the motions hearing was only six months and 23 days. The State argued this was not presumptively prejudicial to even trigger a speedy trial analysis.[16]

The State continued by addressing the reasons for the delay. The State argued that any delay caused by Mr. Carrol's request for a jury trial, namely from February 8, 2022, to March 14, 2022, was attributable to him. The State further argued that the delays caused on March 14, 2022, and June 27, 2022 were due to Mr. Carrol's medical issues and also were attributable to him. The State then argued that Mr. Carrol knew where he was located during these delays and that it was his responsibility to inform "everyone about what is going on [in] his cases." Because of Mr. Carrol's failure to keep the State informed, the State argued, Mr. Carrol could not "then claim innocent [sic] when the State isn't even aware that he's been moved from Perkins to central booking for any reason." The State also directed the court's attention to the fact that Mr. Carrol did not move for a speedy trial until September 19, 2022. Turning to the prejudice factor, the State informed the court as follows:

> And then as for the actual prejudice there is none. The defense argues that the prejudice is the inability I believe to properly prepare

[16] As indicated earlier, and contrary to the State's argument during the hearing, the law is crystal clear that the Sixth Amendment speedy trial clock begins when a defendant is either charged or arrested, whichever is earlier. *See Divver,* 356 Md. at 388-89; *State v. Bailey*, 319 Md. at 410; *Greene*, 237 Md. App. at 512-13 ("The length of delay for speedy trial analysis is measured from the earlier of the date of arrest, filing of indictment, or other formal charges, to the date of trial.").

> for -- to adequately prepare his case. But there's been no assertion of that here. There's been no assertion that the defense has a witness that they lost. There's been no assertion that there's some evidence that is missing because there is nothing. The State's victim is still available if needed. And the defense has not lost a witness or evidence that they have planned to use. There is no prejudice. And the Defendant would be held right now whether this case was proceeding or not. He was ultimately held on a violation of probation in a Baltimore City case as well as he had picked up a new case in Baltimore City that just resolved itself on June 23rd. I believe he's still going through mental health Court in Baltimore City at this time. So, even if this case weren't in existence he would still be held. This case is not the reason for his incarceration.

After entertaining further discussion about the failure of the State to produce Mr. Carrol in court, despite the issuance of writs to Perkins and Central Booking, as well as considering whether any of the time since charges were filed in the District Court could be weighed as neutral, Defense Counsel proffered as to the delays that occurred while the case remained in the jurisdiction of the District Court. Finally, for purposes of clarification, Defense Counsel also clarified that Mr. Carrol never indicated nor communicated to the State that it was Mr. Carrol's intention to enter a guilty plea in this case.

After hearing this argument, the court denied the motion to dismiss. The court recognized that, although it would "make sense for this Court to dismiss this to send a message to the powers that be at DOC transport that this is [an] unacceptable period" in an assault case such as this one, and "[t]o get them to do what they are supposed to do . . . [t]o make them do their jobs," the court, nevertheless, denied Mr. Carrol's motion for the reasons previously set forth above. Mr. Carrol then entered his plea of not guilty on an agreed statement of facts and was found guilty of second-degree assault.

Analysis of Reasons for Delay

We begin with the delay for the time reasonably allocated for pretrial preparation between the February 17, 2021 charge and the first scheduled trial date in the District Court on April 13, 2021, or 55 days, just shy of two months. This time is neutral. *See White v. State*, 223 Md. App. 353, 384 (2015) ("The span of time from charging to the first scheduled trial date is necessary for the orderly administration of justice, and is accorded neutral status.") (quoting *Howell v. State*, 87 Md. App. 57, 82 (1991) (citations omitted)).

Next, we address how much of the almost 20-month delay is chargeable to Mr. Carrol. Both parties agree that the time from February 8, 2022 until March 14, 2022 (34 days), after Mr. Carrol requested a jury trial necessitating transfer to circuit court, is charged to Mr. Carrol. *See State v. Gee*, 298 Md. 565, 576 n. 7 (1984) ("If the defendant removes the trial to a circuit court by praying a trial by jury, any normal delay in bringing him to trial by reason of the request would be, of course, chargeable to him."); *Lloyd v. State*, 207 Md. App. 322, 331 (2012) (concluding that four months and eight days after Lloyd removed case from District Court to Circuit Court was chargeable to Lloyd), *cert. denied*, 430 Md. 12 (2013). We concur that this delay is chargeable to Mr. Carrol, but we are not persuaded that it should weigh heavily against him.

We also conclude that the delay from March 14, 2022 to March 28, 2022 (14 days), as well as from June 27, 2022 to July 11, 2022 (14 days), due to Mr. Carrol's medical issues are chargeable to Mr. Carrol. *See generally, State v. Kanneh*, 403 Md. 678, 692 (2008) ("[D]elays in the proceedings caused by examinations to determine

defendant's competence are charged against the defendant because such evaluations are solely for his benefit.") (citations omitted). *Cf. Barker v. Wingo*, 407 U.S. at 534 (finding that a seven-month delay due to illness of ex-sheriff provides a "strong excuse" for delay); *Ferrell v. State*, 67 Md. App. 459, 464 (1986) (concluding that, although chargeable to the State, the State is less culpable when the delay is due to the illness of prosecutor). *But see Epps v. State*, 276 Md. 96, 111 (1975) (finding that a delay of two months and nine days due to illness of arresting police officer was neutral and "unattributable to either the prosecution, to the defendant, or to the courts[,]" and thus, "a justifiable delay"). This amounts to a total of 62 days, or roughly two months, that are chargeable to Mr. Carrol but, again, we do not weigh these delays heavily.

That brings us to the delays at the heart of this case; namely, the failure of the State to transport Mr. Carrol to court, numerous times, in both the District Court and the circuit court. Quantitatively, this delay was 479 days, or roughly, just under one year and four months, calculated by subtracting the sum of the delays attributable to Mr. Carrol (62 days) and the neutral days for pretrial preparation (55 days) from the total delay (596 days).

With regard to the quality of this delay, Mr. Carrol does not suggest that the State's failures to transport were willful. Instead, Mr. Carrol argues the failure was the result of either prosecutorial indifference or egregious neglect. Mr. Carrol relies on *Brady v. State*, 291 Md. 261 (1981), *Strickler v. State*, 55 Md. App. 688 (1983), and *Carter v. State*, 77 Md. App. 462 (1988), to support his argument. We address these cases in turn.

In *Brady*, the defendant was arrested on June 7, 1977 and charged in Anne Arundel County with breaking and entering. 291 Md. at 263. That charge was dismissed in the District Court on June 19, 1977. *Id.* Unknown to Brady, he was indicted by a grand jury for the same offense on August 22, 1977. *Id.* A notice and summons for an arraignment on that charge was sent to Brady's last known address but returned undelivered. *Id.* at 263-64. When Brady did not appear for the arraignment, a bench warrant was issued for his arrest. *Id.* at 264.

Meanwhile, Brady was held in the Baltimore City Jail on an unrelated charge from November 1977 to May 29, 1978. *Brady*, 291 Md. at 264. Upon his release on May 29, Anne Arundel County filed a detainer and transported him to the Anne Arundel County Detention Center. *Id.* On June 9, 1978, or roughly a year after he was first arrested on the Anne Arundel County charges, Brady was arraigned and finally learned of the charges against him. *Id.* In response, Brady filed a motion for speedy trial. *Id.* A month later, on July 14, 1978, pursuant to the State's request, the court postponed trial. *Id.* Brady was finally tried on August 8, 1978, found guilty of one count of breaking and entering, then sentenced to one year's imprisonment. *Id.* At that time, the trial court denied Brady's motion for speedy trial. *Id.*

On appeal, the Supreme Court of Maryland determined that none of the four *Barker* factors weighed in favor of the State. The length of delay was 14 months, and Brady was excused for asserting his right to a speedy trial because he did not know about the pending charges. *Brady*, 291 Md. at 266-67. As for the reasons for the delay, the Court concluded that that was the "most determinative" factor because, in that case, the

reason for delay was prosecutorial indifference. *Brady*, 291 Md. at 267. The Court stated:

> *As we see it, the State, in the performance of its public trust, has a duty to coordinate the efforts of its various criminal divisions in attempting to locate a defendant*. Its failure to do so in the instant case is particularly disheartening. First, Brady was arrested, released on bail, then informed that the "charge(s)" had been dismissed. Two months later he was indicted for the same offense. Two months after that Brady was incarcerated on an unrelated charge in the Baltimore City Jail, where he remained for six months. Nonetheless, even though Brady was right under their noses, the authorities made no attempt to find him. He remained totally unaware of the pending charges against him. Upon release from City Jail he was sent to Anne Arundel County, where he had to wait several weeks between arraignment and the first scheduled date of trial. As if the State's neglect were not manifest and egregious enough at this point, the State sought and obtained a two week postponement, during which time Brady remained in jail. *This prosecutorial indifference tips the scales most heavily in Brady's favor*.

Brady, 291 Md. at 267 (emphasis added).

The Court also determined that Brady suffered actual prejudice. *Brady*, 291 Md. at 268. Brady was incarcerated from May 29, 1978, the day he was released from Baltimore City Jail, to August 8, 1978, the day he was tried on the Anne Arundel County charges. *Brady*, 291 Md. at 267-68. The Court stated "[t]his period of incarceration was due entirely to the State's neglect, as the Anne Arundel County prosecution could have been instituted while Brady was confined at Baltimore City Jail or perhaps even earlier." *Id.* at 268. Further, the fact that Brady did not learn about the pending charges in Anne Arundel County until June 9, 1978, "must have generated a response more than mere anxiety. He had to be frustrated. In which event, the following two months in jail

awaiting the outcome of the charges had to exacerbate his concern." *Id.* The Court therefore concluded:

> *The factor most determinative of the issue, in this case, is the reason for the delay: prosecutorial indifference. Brady's trial was not delayed because of someone's professional judgment regarding the allocation of scarce resources, but because of the inexcusable failure of the State to check for Brady's presence within the correctional system itself*. However, in our opinion, none of the factors can be found to weigh in favor of the State. We conclude, therefore, that Brady's speedy trial rights were unconstitutionally violated. A dismissal was the appropriate remedy under the facts of this case.

Brady, 291 Md. at 269-70 (emphasis added); *see also Davidson v. State*, 87 Md. App. 105, 112 (1991) ("Although the State's negligence in this case was not a deliberate attempt to delay the trial in order to hamper the defense, neither was it a valid reason which would serve to justify the delay. *The degree of weight to be attributed to a delay resulting from negligence increases in direct proportion to the length of the delay*.") (emphasis added).

In *Strickler v. State*, 55 Md. App. 688 (1983), Strickler failed to return from a work detail while in State custody in Charles County on August 2, 1980. He was charged with escape four days later. *Id*. at 689. He was eventually apprehended and arrested two months later on unrelated charges of storehouse breaking and held in custody in the Prince George's County Detention Center. *Id*. While Strickler remained in State custody in Prince George's County, a detainer was filed against him based on the escape in Charles County. *Id*. On January 6, 1982, after a series of delays, Strickler was convicted of storehouse breaking and sentenced in Prince George's County. *Id*. at 690. A month

later, he was finally indicted in Charles County on the charge related to the August 2, 1980 escape from custody. *Id*. His motion to dismiss for lack of speedy trial was denied by the Circuit Court for Charles County. *Id*.

On appeal, Strickler argued the circuit court erred in denying his motion to dismiss the escape charge. *Id*. at 690. This Court agreed. *Id*. After concluding the length of delay of 23 months was of constitutional dimension, and that the State Police and the State's Attorney are "arms of the executive branch" and "closely allied in law enforcement," we observed that the State Police "had knowledge of the detainer, for they in fact had lodged it against Strickler." *Id*. at 692. Relying on *Brady*, we stated:

> [T]he State Police knew precisely where Strickler was located, inasmuch as they had lodged a detainer against him based on the escape charge. *If, as in* Brady*, the State is held accountable for its failure to ascertain that a person sought for trial is already detained within the correctional system, then, patently, it is accountable when it knows that the individual sought is within that system.*
>
> *Strickler*, as *State v. Hicks*, 285 Md. 310, 403 A.2d 356 (1979), makes clear, *was under "no duty to bring himself to trial." That is the responsibility that is shouldered by the State* and, in the words of *Hicks*, that duty on the part of the State "is not excused merely because the prisoner is incarcerated in another jurisdiction." 285 Md. at 320, 403 A.2d at 361.

Strickler, 55 Md. App. at 693-94 (emphasis added).

In *Carter v. State*, 77 Md. App. 462 (1988), Carter was arrested for credit card misuse on August 25, 1987. A warrant for violation of probation was served at the same time. *Carter*, 77 Md. App. at 464. Carter's probation was revoked a week later, and Carter was sentenced to 18 months in the Division of Correction. *Id*. Over the course of the next five and a half months, Carter was moved from the Division of Correction to a

work release program through the Baltimore County Detention Center and repeatedly not transported to court for various hearings. *Id*. at 464-65. Carter eventually filed a motion to dismiss for lack of speedy trial, which was denied in the circuit court. *Id*. at 465. Although this Court affirmed, relying on both *Brady* and *Strickler*, we attributed a heavy weight to the State's failure to transport Carter while he was in custody:

> John Carter's first two trial dates were postponed due to the State's inexcusable failure to bring him to trial. The third trial date was postponed upon a request by the State for reasons unknown. In the meantime, nearly six months had passed. *The State's inaction transcends the bounds of mere negligence, which is "a more neutral reason" for justification of the length of delay, and rises to the level of "prosecutorial indifference*" condemned in *Brady* and *Strickler*.

Carter, 77 Md. App. at 468 (emphasis added).[17]

[17] Nevertheless, despite assessing a greater weight to the State's reason for delay, the *Carter* majority affirmed based on a balancing of all four of the *Barker* factors:

> In balancing the above factors, we hold that the appellant's right to a speedy trial has not been infringed. The length of time between arrest and trial could fairly be said to be on the low end of the "constitutional dimension" scale. While we find it relevant that much of the delay was occasioned by the prosecutorial indifference exhibited by the State, we cannot and shall not ignore the fact that the appellant further delayed his trial in March 1988, apparently for tactical reasons to which we are not privy. *See* part C, *supra*. On balance we are not prepared to say that the six month trial delay attributable to the State violated appellant's right to a speedy trial.

Carter, 77 Md. App. at 470. Former Chief Judge Robert M. Bell, then a judge on this Court, dissented. *Carter*, 77 Md. App. at 471-76 (Bell, J., dissenting). Agreeing with the majority that the six-month delay due to prosecutorial indifference was to be "heavily assessed against the State," Judge Bell reasoned that the majority unfairly weighed Carter's assertion of his right to a speedy trial and his demand for a jury trial in the District Court against him. *Id*. at 472, 475-76.

These cases conclude that, whether due to bad faith, neglect, or prosecutorial indifference, a delay caused by the State's failure to transport a defendant in State custody is solely attributable to the State and is to be assessed a greater weight than a more neutral reason. We concur. As aptly explained by the Mr. Carrol's reply brief:

> It is true that, unlike the State in *Brady*, the State in this case made repeated attempts to bring Mr. Carrol to court. *At some point, however, well before thirteen months of delay occurred, the State was obligated to change tactics and try something different to ensure that Mr. Carrol was transported to court. Repeating the same failed efforts over and over, as the State did here, demonstrates indifference or extreme neglect just as much as making no attempts at all.*
>
> Given the technology that exists in this day and age, there is no reason the State should not have known where Mr. Carrol was incarcerated on any given day and thus there was no reason why they could not have secured his presence if they had been determined to do so. The prosecutors could have used the inmate locator maintained by the Department of Public Safety and Correctional Services to ensure that writs were issued to the correct facility. To the extent that did not work, they could have picked up the phone and called the small handful of institutions where they knew Mr. Carrol had been housed in the past to ensure that writs were issued to the correct facility. And, to the extent that did not work, they could have asked the court to issue writs for each court date to each of the institutions where Mr. Carrol had previously been located. *The fact that the State did not choose to exercise these options reflects prosecutorial indifference, and the delay caused by the indifference must be weighed heavily against the State.*

(Emphasis added).

Assertion of the Right

The third *Barker* factor examines the "defendant's responsibility to assert his right." *Barker*, 407 U.S. at 531. *Accord Henry v. State*, 204 Md. App. 509, 554 (2012). This factor is "closely related" to the other three, and "failure to assert the right will make

it difficult for a defendant to prove that he was denied a speedy trial." *Barker*, 407 U.S. at 532. We must "weigh [both] the frequency and force of the objections[.]" *Id*. at 529; *see also Glover*, 368 Md. at 228 (The strength of a defendant's assertion, and not just its occurrence, may "indicate whether the delay has been lengthy and whether the defendant begins to experience prejudice from that delay.").

Mr. Carrol was charged in the District Court on February 17, 2021. His first assertion of the right to a speedy trial occurred 421 days later, on April 14, 2022, or approximately a year and just under two months, when the Public Defender entered an appearance in the circuit court case and filed, *inter alia*, a general one-line motion for a speedy trial. Thereafter, on May 16, 2022, or 32 days later, after the State again failed to transport Mr. Carrol, Defense Counsel asked the court whether it could "move for speedy trial at this point," and the court suggested counsel put such a motion in writing.

Mr. Carrol did not assert his right again until September 19, 2022, or 126 days later, roughly four months, when counsel moved orally to dismiss on speedy trial grounds. This was followed, two days later, on September 21, 2022, by Mr. Carrol's written Motion to Dismiss with Prejudice for Lack of Speedy Trial.

We conclude that, although Mr. Carrol did assert his right to a speedy trial by a line when counsel first appeared in the circuit court, and by general inquiry thereafter, there did not appear to be a sense of urgency until less than a few weeks before the written motion to dismiss was filed and argued in the circuit court. Accordingly, we shall weigh this factor in Mr. Carrol's favor, but ever so slightly. *See Hallowell v. State*, 235

Md. App. 484, 519 (2018) (observing that defendant's assertion of his right after eight-and-a-half-month delay accorded "only slight weight").

Prejudice

The final and "the most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice." *Phillips v. State*, 246 Md. App. 40, 67 (2020) (quoting *Henry*, 204 Md. App. at 554). The prejudice factor is "weighed with respect to the three interests that the right to a speedy trial was designed to preserve": (1) avoiding "oppressive pretrial incarceration;" (2) minimizing "anxiety and concern of the accused;" and (3) limiting potential impairment of the defense. *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." *Id*. *See also Hallowell*, 235 Md. App. at 518 (observing that the first two interests are "generally afforded only slight weight").

Generally, "the burden to show actual prejudice rests on the defendant." *Phillips*, 246 Md. App. at 67 (citations omitted). We refined this allocation, however, in *Randall v. State*, 223 Md. App. 519 (2015), *cert. denied*, 457 Md. 414 (2018). There, this Court considered whether the reasons and length of pre-trial delay were sufficient to warrant shifting the burden on the prejudice factor to the State. *Randall*, 223 Md. App. at 554-55. In that case, Randall argued that her speedy trial rights were violated where her trial, on charges of embezzlement and theft from an estate in Montgomery County, was delayed for 25 months. She contended that 16 months of the delay were attributable to the State's inability to serve her with an arrest warrant in Arizona. *Id*. at 546. We concluded that

"the delay [] did not flow from bad-faith or inexcusable neglect" where "the State's pursuit of [Randall] was made with reasonable diligence" and held that that the delay did not give rise to a presumption of prejudice. *Id*. at 556. In making that assessment, we clarified the allocation of the burden on the *Barker* prejudice factor:

> Traditionally, three approaches have been used to arrive at a determination of prejudice. One approach is that it is incumbent upon the accused to make a showing of actual prejudice or at least a strong possibility of prejudice resulting to him or to his defense from the delay. Another approach is that prejudice will be conclusively presumed and necessarily follows from long delay. *The middle position, and that used in this State, is that a certain quantitative and qualitative degree of delay gives rise to a rebuttable presumption of prejudice and will shift the burden of going forward with the evidence from the accused to the State.* Before that critical point is reached, there rests upon the accused, as the moving party, the burden of persuading the hearing judge either (1) that he has suffered actual prejudice, in cases where he has made no demand for a speedy trial, or (2) that he has suffered the strong possibility of prejudice, in cases where he has made a demand for a speedy trial. Once that critical point has been reached, however, the presumption of prejudice arises and the burden of going forward with the evidence shifts to the State. *That critical point on the delay scale where the presumption arises and where the burden shifts has been denominated the point of 'substantial' delay. To rebut the presumption, the State must persuade the hearing judge that the accused suffered no serious prejudice beyond that resulting from ordinary and inevitable delay.*

Id. at 553-54 (emphasis in *Randall*, quoting *State v. Lawless*, 13 Md. App. 220, 232-33 (1971)). We continued:

> Thus, not every accused must present an affirmative demonstration of prejudice to prove a denial of the right to a speedy trial. This is so because "time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" Instead, courts are left to "recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." The Supreme Court has clarified, however, that presumptive

> prejudice alone cannot establish a speedy-trial violation; "it is a part of the mix of relevant facts, and its importance *increases with the length of the delay*."

Randall, 223 Md. App. at 554 (cleaned up).[18]

Here, there is no dispute that Mr. Carrol was held in custody on unrelated charges, at least during some of the time he was incarcerated. That being said, he was held without bond in this case from October 22, 2021 to October 6, 2022, a period of almost a year prior to trial.

As for anxiety and concern, Defense Counsel argued at the hearing that "[t]he mental anxiety of having this case hanging over him not knowing what's happening with it, and not even being able to come to Court to advocate for himself because he's not

[18] Ultimately, we upheld the circuit court's denial of the motion to dismiss, concluding:

> In considering the approximate delay of 25 months in this case, there is an inherent possibility–especially given the nature of the crime in this case–that documents may have been lost and memory may have faded during the delay, and we take this into account. We also must keep in mind, however, that the only delay potentially attributable to the State was the 16 ½ months between the indictment and the arrest. As in *Lawless*, the delay in this case did not flow from bad-faith or inexcusable neglect, and the prejudice is not patent; instead, we concluded above that the State's pursuit of Appellant was made with reasonable diligence based on its uncertainty regarding Appellant's whereabouts. Because the State's actions were excusable and involved minimal negligence at worst, we do not consider the delay to be "substantial" so to give rise to a presumption of prejudice shifting the burden to the State. As the Supreme Court has stated, so long as the State acts with reasonable diligence, and absent any specific prejudice to the defense's case, a speedy trial claim fails "however great the delay." *Doggett*, 505 U.S. at 656, 112 S.Ct. 2686.

Randall, 223 Md. App. at 555-56.

being brought." As for the third factor, Mr. Carrol concedes that he "was not able to specifically articulate how his defense was prejudiced," but asserts that "such proof is not necessary," given the length of the delay. We note, however, that Mr. Carrol suggests, without any supporting evidence, that the memories of witnesses may have faded and "any video of the incident that may have existed was surely destroyed during the pendency of the case."

Based on this, we are not persuaded that Mr. Carrol sustained actual prejudice. But, *Randall* instructs that is not the end of the inquiry – a "possibility of prejudice" may be sufficient to foster a presumption of prejudice. *Id*. at 553-54. We are persuaded that, under the facts of this case, considering the quantitative degree of delay (a sum of 596 days) and the qualitative degree of that delay (479 days attributable to the State), the burden shifted to the State.

To that end, other than arguing that Mr. Carrol failed to show actual prejudice, and the court was not required to credit Mr. Carrol's claim of mental anxiety, the State attempts to rebut the presumption by noting that "Carrol was also in custody for unrelated matters in Baltimore City." The fact that Mr. Carrol was in State custody, however, does not rebut the presumption; instead, it tends to support Mr. Carrol's claim that he did not have the responsibility, nor even the ability, to bring himself to court. Moreover, that same circumstance existed in the three cases previously discussed and, in none of those

opinions did the court deem it to be in the State's favor.[19] Based on the test set forth in *Randall*, we weigh the *Barker* prejudice factor in Mr. Carrol's favor.

Balancing

The United Supreme Court has explained how to balance the four *Barker* factors:

> We regard none of the four factors identified above as 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. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.

Barker, 407 U.S. at 533 (footnote omitted).

The specific facts of each case will determine the balancing of the four factors. *Glover*, 368 Md. at 231. "[W]e are mindful that our task is to ensure that the petitioner's right to a speedy trial has not been violated; we are also mindful, however, that delay is often the result of efforts to ensure the highest quality of fairness during a trial." *Id*. at 231-32. Furthermore:

> "[T]he delay that can be tolerated is dependent, at least to some degree, on the crime for which the defendant has been indicted." *Glover*, 368 Md. at 224 (citing *Barker*, 407 U.S. at 531). Thus, a twelve-month-sixteen-day delay was held to result in a constitutional violation in "a *relatively run-of-the-mill* District Court case," where the charges were driving under the influence of alcohol and running a red light, and the trial of the case "presented little, if any,

[19] As noted, in *Carter*, the primary reason this Court affirmed the denial of the motion to dismiss appears to have been the defendant's failure to timely assert his right to a speedy trial, his jury trial demand, and the fact that the length of delay was only seven months and twenty-five days. *See Carter*, 77 Md. App. at 469-70; *Carter*, 77 Md. App. at 471 (Bell, J., dissenting).

> complexity." [*Divver*, 356 Md. at 390]. In contrast, a twenty-month delay was permitted in a relatively complex murder case, despite "unacceptable reasons" for that delay. [*Fields v. State*, 172 Md. App. 496, 550 (2007), *cert. denied*, 399 Md. 593 (2007)].

Hallowell, 235 Md. App. at 519 (emphasis added).

We hold that there was a presumptively prejudicial delay of constitutional dimension between the time Mr. Carrol was charged with second-degree assault on February 17, 2021, and when he entered the not guilty plea on an agreed statement of facts on October 6, 2022. Although he did not timely assert his right to a speedy trial, on balance, the primary reason for the delay was due to the State's failure to bring him to court, and although not purposeful, amounted to prosecutorial indifference and/or egregious neglect under the circumstances of this case. To use the wording from the *Hallowell* case, we are persuaded that the delay of almost twenty months in a "relatively run-of-the-mill" second-degree assault case amounted to a violation of Mr. Carrol's constitutional rights under the Sixth Amendment. The court erred in denying Mr. Carrol's Motion to Dismiss with Prejudice for Lack of Speedy Trial.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED; THE CONVICTION IS VACATED.

COSTS TO BE PAID BY HOWARD COUNTY.