Circuit Court for Baltimore City
Case No.: 119240010

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2092

September Term, 2023

SHATIKA N. LAWSON

v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah, S., J.

Filed: March 28, 2025

*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).

In August 2019, a grand jury in the Circuit Court for Baltimore City indicted Shatika Lawson, the appellant, for first-degree child abuse resulting in death and related charges, all arising out of the death of her son, H.[1] Over three years later, when her case still had not come to trial, the appellant moved to dismiss the indictment for violation of her constitutional right to a speedy trial. Following a hearing, her motion was denied. After unsuccessfully renewing her motion, the appellant pled guilty to first-degree child abuse resulting in death, conditioned upon preservation of her right to challenge the speedy trial rulings on appeal. The court sentenced her to a term of life, suspend all but 30 years, with five years' supervised probation upon release.

The appellant presents one question for review, which we have rephrased slightly:

> I. Did the circuit court err by denying the appellants' motions to dismiss the indictment for violation of her constitutional right to a speedy trial?[2]

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Background

On August 1, 2019, the appellant and her wife, Alicia Lawson ("Alicia"), reported to the police that their son, H., age 4, was missing.[3] The appellant told the police that she

[1] We use the same random initial to signify the victim's name as used by the State in its brief.

[2] The appellant worded her question presented as follows: "Whether the lower court erred in denying Ms. Lawson's motions to dismiss the indictment for a violation of her constitutional right to a speedy trial?"

[3] H. was Alicia's biological son. The appellant had not adopted H., but the three lived together as a family and the appellant was H.'s primary caregiver.

had been outside their house with H. and when she went inside briefly to get him a glass of water, he disappeared. She suspected that he had wandered off.

The next day, the police received a tip that H. had physical limitations that would have made it impossible for him to simply walk away. That same day, the police obtained consent to search the parents' cell phones. On Alicia's cell phone they found photographs of H. with extensive burns on his body and skin floating in the bathtub. The photographs were taken on July 23, 2019. The appellant and Alicia then admitted that H. had suffered scalding burns in the bath that day; they did not seek medical treatment for him; and he died just over a week later. They got a ride to a dumpster where they disposed of his body. The police recovered it there.

The medical examiner found scalding on H.'s "buttocks, hips, perineum, genitalia, posterior proximal thighs, posterior distal right leg, right ankle, posterior and medial left ankle, and dorsal right foot." In addition, H. had suffered other injuries including renal failure and bacterial colonization in the lungs and on the skin. The medical examiner concluded that H. had died from complications of his scalding injuries. His death was classified as a homicide.

Subsequently, a pediatrician specializing in child abuse reviewed H.'s medical records and the autopsy report and concluded that H.'s injuries were consistent with "immersion burns," which result when a person is forcibly placed in scalding water. In her report, the expert opined that H. had become dehydrated and developed an infection from lack of treatment of the burns, and it was highly probable that, had he been taken to the hospital for treatment, he would have survived.

Speedy Trial Timeline

On August 4, 2019, the appellant was arrested and charged in the District Court of Maryland for Baltimore City with first-degree child abuse resulting in death and related charges. She was ordered to be held without bond. On August 28, 2019, a grand jury in the Circuit Court for Baltimore City indicted her on the same charges. Alicia was indicted on the same charges as well.

On September 10, 2019, defense counsel entered an appearance for the appellant and filed an omnibus motion raising, among other things, the appellant's right to a speedy trial.[4] The appellant was arraigned on October 4, 2019, and was assigned a trial date of January 21, 2020.

Over 45 months elapsed from the date of the appellant's arrest to her final trial date (on which she entered the guilty plea), and that of course is the basis for the speedy trial issue in this case. The parties only dispute two of the multiple postponements that produced that delay, however. For that reason, our review of the early history of this case, prior to those two postponements, shall be brief.

A delay in finalizing the medical examiner's report, the complexity of the medical issues, and Alicia's being tried separately on a date before the appellant combined to cause the court to postpone the appellant's initial January 21, 2020 trial date to March 31, 2020. Before that date was reached, on March 13, 2020, the Maryland courts closed statewide due to the COVID-19 pandemic. Thereafter, the appellant's trial date was continued seven

[4] The omnibus motion is not in the record, but the parties agree that it was filed and that it included an invocation of the appellant's right to a speedy trial.

times over an almost 18-month period for administrative reasons caused by the pandemic shutdown and pauses in jury trials that continued even after the courts partially reopened.

Meanwhile, on August 9, 2021, negotiations with the State resulted in Alicia's pleading guilty to first-degree child abuse resulting in death.[5]

Near the conclusion of the COVID-driven period of postponements, the appellant's trial was set to commence on February 1, 2022. Jury trials still were paused at that time, however. Counsel exchanged emails about potential trial dates and on February 1, 2022, appeared before the administrative postponement court. The court asked whether the parties had agreed upon a trial date. The prosecutor responded, "[W]e're looking at November the 30th [2022]." In response to the court's query, the prosecutor advised that the trial was expected to last 10 days. Defense counsel interjected twice during the hearing, both times to clarify that November 30, 2022, was a Wednesday. The court postponed the February 1, 2022, trial date and rescheduled the trial for November 30, 2022. The parties refer to this as "the long postponement" and so shall we.

On March 7, 2022, jury trials resumed statewide.

On November 30, 2022, the parties appeared in court for the appellant's tenth trial date. The lead prosecutor assigned to the case from the outset, Rita Wisthoff-Ito, was not present. Appearing in her place was Michael Dunty, Chief of the Homicide Division at the Baltimore City State's Attorney's Office ("BCSAO"). Although not explicitly stated on the record, it was known to all concerned that a few weeks earlier Ms. Wisthoff-Ito had

[5] Alicia was sentenced to life, suspend all but 30 years, with five years' supervised probation upon release. That is the same sentence ultimately imposed on the appellant.

been removed abruptly from all her homicide cases by Marilyn Mosby, the then-State's Attorney for Baltimore City. Mr. Dunty placed on the record a new plea offer the State had made to the appellant. Defense counsel stated that she wished to discuss that offer with the appellant at greater length and that the State had proposed a trial date in May 2023. Defense counsel made clear, however, that her client was "still asking to go to trial today."

The court advised that it understood defense counsel's position on the postponement but given the complexities of the case, it could not force the State to go to trial with new counsel. The court reset the trial date for May 2, 2023. Mr. Dunty stated that he personally would try the case on that date.

The Motion to Dismiss

On December 19, 2022, the appellant filed a motion to dismiss the indictment for violation of her constitutional right to a speedy trial. A hearing was held on March 28, 2023. As it turned out, by then Ms. Wisthoff-Ito was back in the BCSAO Homicide Division, having been reassigned there by Ivan Bates, the new (and current) State's Attorney for Baltimore City.

As a threshold matter, the court considered whether Ms. Wisthoff-Ito and other members of the BCSAO should be compelled to testify about the reasons for her unavailability on November 30, 2022. During that discussion, it was stipulated that Ms. Wisthoff-Ito always remained an Assistant State's Attorney within the BCSAO and that, but for her reassignment to a non-trial unit of that office, would have been available to try the appellant's case. It further was stipulated that the long postponement that ended with the November 30, 2022 assigned trial date had been occasioned by Ms. Wisthoff-Ito's busy

trial schedule. Once the courts had reopened for jury trials on March 7, 2022, after two years, she was carrying 50 homicide cases and was booked back-to-back for trial until the end of November 2022. The court denied the appellant's request to compel BCSAO attorneys to testify at the hearing, a ruling that is not challenged on appeal.

Earline Code, the appellant's mother, testified that the appellant had been on suicide watch three times while incarcerated awaiting trial.[6] In that time, Ms. Code had relapsed into narcotics use due to the stress of her only daughter being incarcerated.

The appellant testified that she had been incarcerated since August 2019 and that for the first two and a half years, she was being held in the same facility as Alicia, by then her ex-wife. That itself was stressful. She confirmed her mother's testimony that she had been placed on suicide watch three times. Since then, she had been taking a prescribed anti-depressant. Before being incarcerated, she never had been suicidal or even depressed. Since her arrest, she had lost her home and her car. She stated that she intended to testify at trial. When asked if her memory was as fresh now as it was in 2019, she replied, "Yes."

Defense counsel introduced into evidence emails she and Ms. Wisthoff-Ito had exchanged prior to the long postponement.[7] On January 11, 2022, Ms. Wisthoff-Ito had

[6] Earline Code was not asked to spell her name in the hearing, which was held on Zoom.

[7] Defense counsel also introduced into evidence a recording of a hearing before the administrative judge in an unrelated criminal matter in which Ms. Wisthoff-Ito was the lead prosecutor. During that hearing, the administrative judge scheduled another of Ms. Wisthoff-Ito's trials for May 2, 2023, the date the appellant's trial was then set to commence, because there no longer was a judge available to preside over a ten-day trial, which was how long the appellant's trial was anticipated to take.

emailed defense counsel asking, in relevant part, "What dates are we looking at?" Defense counsel replied, "Week of May 2?" Ms. Wisthoff-Ito emailed again on January 28, 2022, stating that she was specially set through October; that she understood that defense counsel was unavailable in the first half of October; and that she already had an older case set in for trial on November 1, 2022. She suggested November 29 or 30, 2022, or December 1, 2022. Defense counsel replied, "Those are fine with me[.]" As we have recounted above, at the February 1, 2022 hearing, the administrative court postponed the trial date to November 30, 2022.

On the merits of the motion to dismiss, defense counsel argued that, although much of the length of the delay resulted from the COVID shutdowns, the record reflected that even absent the pandemic, delays by the State in paying its expert and obtaining the expert's report would have necessitated additional postponements. Turning to the long postponement, defense counsel pointed out that the emails between herself and Ms. Wisthoff-Ito reflected that defense counsel had sought a trial date in May 2022, but the prosecutor only had offered dates at the end of November 2022. Defense counsel proffered that the administrative court was "not engaging in discussion of dates" during that period, but she had other cases set for May 2022, suggesting that it was likely the trial could have been scheduled then but for Ms. Wisthoff-Ito's unavailability. Defense counsel asserted that the State should be charged for 212 days of the delay – from May 2, 2022 through November 30, 2022. With respect to the subsequent postponement on November 30, 2022, defense counsel argued that Ms. Wisthoff-Ito "was available and that the mere fact that the [BCSAO] did not want her to try homicide[cases] should be counted heavily against the

State." In defense counsel's view, the decision to remove Ms. Wisthoff-Ito was made in bad faith.

The prosecutor responded that Ms. Wisthoff-Ito's unavailability on November 30, 2022 did not amount to bad faith because her temporary reassignment was unrelated to the appellant's case. The bulk of the delay was due to normal trial preparation followed by the COVID shutdown, all of which should be accorded neutral weight. Moreover, although the appellant had asserted her speedy trial right at the outset of the case in the omnibus motion, she had not asserted it vigorously thereafter, until the November 30, 2022 hearing. Also, the appellant had not shown any actual prejudice to the defense of her case, as opposed to more generalized prejudice arising from a lengthy pretrial detention.

The Motion Court's Ruling

As we shall recount below, using the time frame beginning on the date of arrest (August 4, 2019) and ending on the then-scheduled trial date (May 2, 2023), the motion court determined that the length of the total delay triggered a constitutional analysis and, making findings about and weighing the factors in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), concluded that the appellant's right to a speedy trial had not been violated.

Renewed Motion to Dismiss and Guilty Plea

After the motion to dismiss was denied, the appellant's May 2, 2023 trial date was postponed an additional six days to May 8, 2023, and then was held over until the following day. On May 9, 2023, the appellant renewed her motion to dismiss. In presenting the renewed motion, defense counsel summarized the motion court's ruling and argued that the additional delay beyond May 2 should be weighed against the State. The prosecutor

responded that the reason the trial date was postponed beyond May 2 was court unavailability, which should not be weighed against the State.

Again, we shall discuss the plea court's decision in our analysis below. That court incorporated the motion court's findings and made additional findings on the record. It determined that the entire 45-month delay was of constitutional dimension and, applying the *Barker v. Wingo* factors, concluded that the appellant's constitutional right to a speedy trial was not violated.

Thereafter, the appellant entered a conditional guilty plea to the charge of first-degree child abuse resulting in death. The court accepted the plea and, in a later disposition, sentenced her as stated above. This timely appeal followed.

DISCUSSION

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend. VI.[8] In *Barker v. Wingo*, the United States Supreme Court adopted a "balancing test" in which "the conduct of both the prosecution and the defendant are weighed[,]" and enunciated four factors to be balanced by a court: 1) the length of delay, 2) the reason for the delay, 3) the defendant's assertion of the speedy trial right, and 4) prejudice to the defendant. 407 U.S. at 530. The first factor "is to some extent a triggering mechanism" because "[u]ntil there is some delay which is presumptively prejudicial, there

[8] Article 21 of the Maryland Declaration of Rights also protects the right to a speedy trial in all criminal prosecutions. The Supreme Court of Maryland has treated the two rights as coterminous. *See Erbe v. State*, 276 Md. 541, 545-46 (1976).

is no necessity for inquiry into the other factors that go into the balance." *Id.* "'None of these factors is, in itself, either necessary or sufficient to find a violation of the speedy trial right; instead, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Phillips v. State*, 246 Md. App. 40, 56 (2020) (quoting *Nottingham v. State*, 227 Md. App. 592, 613 (2016)).

"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." *Howard v. State*, 440 Md. 427, 446-47 (2014). Although we accept the court's "first level findings of fact unless clearly erroneous[,]" *Henry v. State*, 204 Md. App. 509, 549 (2012), we conduct "our own independent constitutional analysis" of the *Barker v. Wingo* balancing test to those facts. *Glover v. State*, 368 Md. 211, 220 (2002). Accordingly, our review is for the most part *de novo*.

A. The Four *Barker* Factors

1. Length of the Delay

"[T]he first [*Barker*] factor, the length of the delay, is a 'double enquiry,' because a delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis." *State v. Kanneh*, 403 Md. 678, 688 (2008). The length of delay generally is measured from the date of arrest or the filing of formal charges, whichever comes first. *Wheeler v. State*, 88 Md. App. 512, 518 (1991). The end date is the first day of trial. *See Ratchford v. State*, 141 Md. App. 354, 358 (2001) (discussing the bookends for a "length of delay" analysis).

In the case at bar, the motion court determined that 1,370 days elapsed from the appellant's arrest on August 4, 2019 to her then-scheduled trial date of May 2, 2023. It found that delay to be an "extraordinary length of time for a defendant to wait for a trial in any case, even a complicated homicide case" and that it was "certainly" of constitutional dimension. Before the plea court, the length of delay had increased by seven days. That court found that the delay was of constitutional dimension as well.

By our calculation, the delay from the August 4, 2019 date of arrest to the May 2, 2023 trial date actually was 1,367 days; and to the last trial date of May 9, 2023 was 1,374 days (three years, nine months, and five days). The motion court's four-day error in calculating the length of delay is of no consequence. The State concedes that the delay in this case is of constitutional dimension. Without question it is. *See, e.g.*, *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.").

Although the length of delay is critical as to whether a constitutional inquiry is triggered, as a factor in the balancing test, "in and of itself, [it] is not a weighty factor[.]" *Glover*, 368 Md. at 225. Assuredly, the delay in this case, amounting to almost four years, was exceptionally long.

2. Reasons for the Delay

"Closely related to length of delay is the State's reason justifying a delay with different weights being assigned to different reasons." *Phillips*, 246 Md. App. at 59. In *Barker*, the Supreme Court stated:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

407 U.S. at 531 (footnote omitted).

The motion court categorized as neutral the two periods between the appellant's date of arrest and her first (January 21, 2020) trial date (171 days) and between that trial date and her first postponed (March 31, 2020) trial date (70 days), finding that they were normal trial preparation times in a case of this complexity. It attributed the postponements between March 31, 2020 and July 7, 2021 (464 days) to the COVID-19 pandemic and categorized them as neutral as well. The court attributed the two postponements that followed—between July 7, 2021 and February 1, 2022 (210 days)—to the pandemic and to plea negotiations relating to the appellant's and Alicia's cases. It categorized those postponements as neutral because of the pandemic and, with respect to the plea negotiations, the appellant's acquiescence, which was in her own self-interest. None of these findings are clearly erroneous, and these neutral assessments are not challenged on appeal.

The 303-day long postponement (February 1, 2022, to November 30, 2022) and the 153-day last postponement (November 30, 2022, to May 2, 2023) were the focus of the defense motion. The motion court determined that the primary cause of the long postponement was Ms. Wisthoff-Ito's unavailability due to her hectic post-COVID trial schedule. It categorized the first 120 days of that period (through May 31, 2022) as neutral,

noting that jury trials had not resumed when the parties appeared before the administrative court on February 1, 2022, and finding that a date four months beyond February 1 was reasonable given the case congestion generated by the COVID shutdown. It attributed the remaining 182 days to the State because the scheduling problems resulted from understaffing. It concluded that that 182-day period should be weighed heavily against the State because it suggested mismanagement of staff caseloads. On appeal, the State disagrees with that assessment. The motion court determined that the last postponement, to May 2, 2023, was occasioned by a discretionary transfer of Ms. Wisthoff-Ito, the lead prosecutor, which was unusual, as opposed to by illness or ordinary scheduling concerns. For that reason, it assessed that postponement against the State and gave it "greater weight" than a "normal postponement for the State's unavailability[.]" It found, however, that Ms. Wisthoff-Ito's unavailability was not "contrived or . . . created deliberately in order to postpone [the appellant's] case." It made an express finding that there was no bad faith on the State's part.

The plea court determined that the initial postponement, the COVID-related postponements, and the two postponements occasioned by Ms. Wisthoff-Ito's trial schedule and unavailability all were essentially neutral and did not weigh heavily against the State. Although the postponement from November 30, 2022 to May 2, 2023 was unusual due to Ms. Wisthoff-Ito's abrupt reassignment, it was "far from a deliberate attempt to delay trial." The plea court was of the view that another prosecutor could not have stepped into Ms. Wisthoff-Ito's shoes given the complexity of the medical issues in the case. It concluded that the postponement from November 30, 2022, while caused by

the State, should be accorded little weight. Like the motion court, the plea court made an express finding of no bad faith on the part of the State. Finally, the plea court found that the last postponements, for six days, plus the one day the case was held over, were due to court congestion and accorded them neutral weight.

The appellant does not dispute that the vast majority of the delay in this case—1,002 days from the date of arrest to May 2, 2022, and the final seven days—properly are classified as neutral. And she does not seriously dispute the neutral categorization of the delay through May 31, 2022. We too are of the view that that entire period of delay, amounting to 1,039 days, or over 75% of the total delay, is attributable to neutral causes. That leaves 335 days, comprising part of the long postponement and all of the November 30, 2022, to May 2, 2023 postponement. This 335-day period of delay was due to unavailability of the prosecutor.

Generally, the "ultimate responsibility" for prosecutorial unavailability rests with the State. *Barker*, 407 U.S. at 531. As we see it, the portion of the long postponement that ran from June 1, 2022 to November 30, 2022 should not weigh heavily against the State given that the circuit courts only emerged from a two-year pause in jury trials on March 7, 2022. Jury trials were suspended due to a pandemic that upended Maryland, the United States, and the world. While it was inevitable that a rush in trying jury cases would follow, the BCSAO could not snap its fingers and magically add, for an indeterminate length of time, a roster of experienced attorneys to handle the onerous backlog of trials. And we agree with the plea court that lawyers are not fungible, and the State is not well served by

removing a prosecutor who has handled a complex case from the beginning and substituting someone else.

The email communications between defense counsel and Ms. Wisthoff-Ito made plain that they both were slammed during this time period, especially Ms. Wisthoff-Ito, who did not have an open trial date for which defense counsel also was open until November 30, 2022. This problem was exacerbated by the need to schedule the trial in this case for 10 days, *i.e.*, two weeks, a reasonable estimate given the complexity of the evidence. There was no evidence that Ms. Wisthoff-Ito's unavailability was an intentional act or anything other than the unavoidable fallout of the prolonged closure of the Maryland courts. We agree with the State and the plea court that this period should weigh slightly, not heavily, against the State.

The appellant concentrates her argument on the final lengthy postponement, from November 30, 2022 to May 2, 2023, which she asserts was inexcusable and due to bad faith on the part of the State in abruptly moving Ms. Wisthoff-Ito to a non-trial position a few weeks before the November 30 trial date. The appellant maintains that this was political gamesmanship that should be weighed very heavily against the State.

To be sure, Ms. Wisthoff-Ito's temporary reassignment within the BCSAO was unusual. There was no evidence that it was related to the appellant's case, however. The motion court rejected the argument that Ms. Wisthoff-Ito's temporary reassignment was undertaken to generate a postponement in this case, and it and the plea court made express findings that the State did not act in bad faith. Those findings are supported by the evidence. Although the circumstance was atypical, we see no reason to treat Ms. Wisthoff-Ito's

unavailability for the November 30, 2022 trial date differently from cases in which a new prosecutor is assigned. *See, e.g.*, *Peters v. State*, 224 Md. App. 306, 363-64 (2015) (stating that a postponement caused by the assignment of a new prosecutor to the case was attributed to the State but did not "weigh heavily in [this Court's] analysis"). Accordingly, the postponement from November 30, 2022 to May 2, 2023 is attributable to the State but does not weigh heavily against it.

3. Assertion of the Right

"The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right[,]" and the "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 531-32. Acquiescence in postponements is a failure to assert the right and weighs against a defendant. *Kanneh*, 403 Md. at 693.

Here, the motion court found that the appellant asserted her right to a speedy trial in the omnibus motion that was filed when defense counsel entered her appearance and that she continued to assert it "at every stage," although not as vigorously. This finding was not clearly erroneous. Our review of the record reflects that the appellant acquiesced in the initial postponement and the COVID-related postponements, which was to be expected and does not detract from her initial assertion of the right.

The motion court did not make an express finding about whether the appellant acquiesced in the long postponement. The record reflects that she did. When the parties appeared before the administrative court on February 1, 2022, defense counsel spoke twice, only to clarify the day of the week on which the selected trial date fell. She never voiced

to the court her position in the motion to dismiss and on appeal—that her trial should have been scheduled in May 2022. Even considering the emails exchanged between counsel and introduced at the hearing on her motion to dismiss, the appellant, through counsel, suggested a trial date in May 2022 but lodged no objection when the State offered a trial date at the end of November 2022. *See Griffin v. State*, 262 Md. App. 103, 172-74 (2024) (discussing the importance of when and in what manner a defendant asserts his or her right to a speedy trial in assessing the third prong under *Barker*). The plea court found that the appellant had acquiesced in most of the postponements, which weighed against dismissal.

We are satisfied, however, that the appellant vigorously asserted her right to a speedy trial at the November 30, 2022 hearing, when defense counsel asked to go to trial that day. Consistent with that position, the appellant filed her motion to dismiss on speedy trial grounds a few weeks later.

4. Prejudice

The final and "'most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice."' *Phillips*, 246 Md. App. at 67 (quoting *Henry*, 204 Md. App. at 554); *see also Griffin*, 262 Md. App. at 174 ("[B]y far the most important [factor] is prejudice to the defendant."). 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). "Oppressive pretrial incarceration with its attendant anxiety and concern to the accused is generally afforded only slight weight." *Hallowell v.*

State, 235 Md. App. 484, 518 (2018). Conversely, the '"most serious'" of the three interests '"is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.'" *Kanneh*, 403 Md. at 693 (quoting *Barker*, 407 U.S. at 532). "[T]he burden to show actual prejudice rests on the defendant." *Phillips*, 246 Md. App. at 67.

The motion court found prejudice to the appellant occasioned by the lengthy delay in the form of stress, the toll her incarceration took on her mental health, and her frequent exposure to COVID in the pretrial detention setting. It found no prejudice to the appellant's ability to defend herself in this case. Indeed, no argument was advanced that the appellant was unable to meet with counsel to prepare her defense, that witnesses had become unavailable, or that the passage of time had damaged or interfered with her defense in some way. Quite the contrary, the appellant testified that her own memory had not "dimmed" since 2019.

The plea court likewise found that the appellant did not adduce any evidence of actual prejudice. Absent evidence that the delay impaired the appellant's ability to prepare and defend herself, the plea court weighed that factor in favor of the State.

These findings are supported by the record and are not clearly erroneous. There was no evidence whatsoever of actual prejudice to the appellant's ability to defend herself. We note, moreover, that this was not a case that depended upon eyewitness testimony where memories would fade over time. It turned on expert opinions concerning the nature and genesis of H.'s burns and his likelihood of survival had he received prompt medical attention for the scalding injuries. In the absence of any evidence that the appellant's

defense was prejudiced by the delay in bringing this case to trial, that factor weighs heavily in favor of the State.

B. Balancing the *Barker* Factors

The appellant primarily takes issue with the manner in which the motion court and the plea court balanced the *Barker* factors. She argues that they treated the analysis as a mathematical equation, rather than as a multi-factor balancing test. In her view, they should have considered the final two lengthy postponements in the context of the overall long delay that preceded them, even though those delays were classified neutrally. She maintains that the State needed an "extraordinary reason" not to bring her case to trial more quickly than it did after the COVID shutdown but did not offer one. She also maintains that the motion court failed to adequately weigh the prejudice factor, requiring more of a showing from her than our case law requires.[9]

We conduct our own balancing of the *Barker* factors. The total length of the delay was particularly long. We agree with the appellant that, even when a large portion of the total delay was not attributable to the State, as we discuss next, the overall length of the delay is not to be culled out and ignored. The case law is clear, however, that while the length of delay is critical to whether a constitutional analysis is triggered, it is the least

[9] In this regard, the appellant's reliance on *Brady v. State*, 291 Md. 261 (1981), is misplaced. There, the defendant was arrested on a breaking and entering charge and released on bail, and then was told that the charges against him were dismissed. He was not given notice for 14 months that a grand jury had indicted him on those charges. On those unique facts, our Supreme Court held that, even in the absence of a showing of actual prejudice, the prosecutorial indifference tipped the scales in favor of dismissing the charges for violation of the defendant's right to a speedy trial. The case at bar bears no resemblance to *Brady*.

weighty of the *Barker* factors we balance. The total length of delay weighs slightly in favor of the appellant.

The reasons for the delay factor also weighs slightly in favor of the appellant. Over three-quarters of the delay was due to neutral reasons, mostly the COVID-19 shutdown, and other than the delay occasioned by plea negotiations in Alicia's case, was not specific to the appellant's case. It is notable, however, that the appellant never asked for a postponement. Every postponement other than those necessitated by the court closures and suspension of jury trials was sought by the State. And 335 days of the total delay—almost a year—were attributable to the State. Nevertheless, for the reasons explained, that period of delay was not a ploy, a consequence of prosecutorial indifference, or the product of bad faith. It was occasioned by prosecutor unavailability during the return to normalcy after the COVID shutdown.

The assertion of the right factor weighs very slightly in favor of the appellant given that she invoked her right to a speedy trial at the outset of her case and again at the November 30, 2022 hearing. It is significant that she acquiesced in the long postponement from February 1, 2022 to November 30, 2022, however, and in the prior delay concerning Alicia's plea negotiations.

Finally, the prejudice factor, which is the most important one, weighs very heavily in favor of the State. To be sure, the appellant suffered some prejudice in the form of stress and depression from her lengthy pretrial detention. But she utterly failed to show any impairment to her defense from the lengthy delay in this case, which is the actual prejudice that is crucial in the balancing of the *Barker* factors.

With the first three factors weighing minimally to slightly in favor of the appellant, and the last and most important factor weighing heavily in favor of the State, we conclude that the appellant's constitutional right to a speedy trial was not violated. We note that, given the importance of the actual prejudice element, our balancing of the *Barker* factors would favor the State even if the reasons for the last 335-day period of delay were weighed more heavily than we have chosen to weigh them.

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