IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

NO. 2747, SEPTEMBER TERM, 2008

LORENZO VAIDES A/K/A JULIO VALDES, WILL RIVERS,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
(THE HONORABLE JOHN P. MILLER, PRESIDING WITH A JURY)

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

Appellant Lorenzo Vaides appeals from his December 16, 2008, conviction for conspiracy to distribute cocaine. Vaides was found guilty on one of five charged counts (Count III) after a two-day jury trial in the Circuit Court for Baltimore City before the Honorable John P. Miller. Case No. 107030030. The same jury found Vaides not guilty on two counts: possession (Md. Code, Crim. Law § 5-601, Count II) and possession with intent to distribute (Md. Code, Crim. Law § 5-602, Count I), and was unable to reach a verdict on two counts: conspiracy to possess (Count V) and conspiracy to possess with intent to distribute (Count IV).

On January 28, 2009, the trial court sentenced Vaides to fourteen years imprisonment. This appeal followed.

QUESTIONS PRESENTED

I. Did the trial court err by allowing the State to introduce, through a police detective, a highly prejudicial expert opinion speculating about the incriminating actions Vaides ***would*** have taken as a purported lookout in a drug conspiracy, where the detective in fact had observed Vaides ***not*** take those actions?

II. Did the trial court violate Vaides' constitutional rights of confrontation when it prevented defense counsel from cross-examining Vaides' alleged co-conspirator about his motivation for testifying on behalf of the State?

III. Did the trial court err in holding that there was no violation of either the *Hicks* rule or Vaides' rights to a speedy trial where almost two years passed between Vaides' arrest and trial, the delay was overwhelmingly attributable to the State and its refusal to sever two unrelated cases, Vaides' counsel repeatedly argued against postponement, the allegations involved an uncomplicated street crime, and the delay severely impaired Vaides' ability to mount a full and fair defense?

STATEMENT OF FACTS

A. The Charged Conduct

On the afternoon of December 29, 2006, Baltimore Detective George Cannida set up surveillance in a commercial neighborhood of Baltimore City near the intersection of North and Druid Hill Avenues. (1T. 137.)[1] Detective Cannida testified that he observed, on two separate occasions, unknown individuals approach Robert Giles and engage in brief conversation. Giles would then walk the individuals around the street corner off of the main strip, behind a white hauling truck, and hand them an unidentified package in exchange for U.S. currency. (1T. 138, 162.) Immediately after each transaction, Detective Cannida alerted his nearby arrest team via Nextel phone. (1T. 177-78.) Each time, however, the arrest team was unable to track down the suspected purchaser. (1T. 140.)

Numerous other people were nearby that afternoon. (1T. 153.) Appellant Vaides was standing near the corner of North and Druid Hill Avenues. (1T. 164.) Detective Cannida witnessed minimal contact between Vaides and Giles. He saw Vaides and Giles speak to one another at some point, but he was not close enough to hear any conversation. (1T. 158.) Vaides never accompanied Giles around the corner. In fact, Vaides' back was toward Giles while Giles engaged in the suspected transactions. (1T. 174.) Detective Cannida testified that he saw Giles pocket the money he received from the second suspected purchaser. (1T. 173.) After Giles came back around the corner, Detective

[1] The trial transcript is in two volumes, annotated as "1T." (December 15, 2008) and "2T." (December 16, 2008). The pre-trial hearing transcripts are in nine volumes, and are cited as follows: *e.g.*, (T. 5-6 (Vol. III)).

Cannida claimed that he saw Giles hand money to Vaides. (1T. 147, 171-72.) Detective Cannida could not estimate how much money Giles handed Vaides, or whether it was the same money Giles had received from the second suspected purchaser. (1T. 171-73.)

Detective Cannida observed even less contact between Vaides and the suspected purchasers. Vaides did not interact at all with the first individual. (1T. 160-61.) Detective Cannida testified that Vaides gestured the second individual over to Giles, but he did not observe any conversation between the two. (1T. 169-70.) Vaides did not engage in any transactions with either individual. (1T. 160.)

After the arrest team's unsuccessful attempt at locating the second suspected purchaser, Detective Cannida directed the team to arrest Giles and Vaides. (1T. 142.) Giles noticed the patrol vehicles approaching and ran into a pawn shop. (1T. 144.) The officers circled the block one time. Giles then exited the pawn shop, and grabbed a baby stroller from a woman nearby. (1T. 144.) Giles started walking the stroller, with the baby inside. As police approached, he shoved two zip lock bags of cocaine into the stroller. (2T. 9.) The officers arrested Giles and recovered the two bags of cocaine from the stroller. (2T. 9.) Police recovered $227 from Giles. (2T. 9-10.)

During all of this, Vaides stood in place on the sidewalk. It was undisputed at trial that he never attempted to alert Giles to the police presence, and that he never attempted to evade police. (1T. 144, 175, 181-83; 2T. 15.) After Giles had been arrested, the officers arrested Vaides and placed him in custody. (2T. 9.) No drugs were found on Vaides.

B. Pre-Trial Proceedings

Vaides was indicted in this case on January 30, 2007. (R. 12-14.)[2] His arraignment was initially scheduled for February 14, 2007, but was postponed because the court was closed due to snow that day. On March 2nd, the case was reset for arraignment on March 21, 2007. Vaides was not present at the rescheduled arraignment on March 21st. The case was reset for arraignment one week later, on March 28, 2007. Vaides was not present on March 28th, and a bench warrant was issued.

As defense counsel explained at trial, Vaides contends that he never received notice of his rescheduled arraignment proceedings. (1T. 5.) It does not appear that Vaides was represented by counsel during this time. Mr. Avie Stone of the Public Defender's office had entered an appearance on behalf of Giles, but the State was still attempting to serve papers on Vaides personally as of March 23, 2007. (See R. 17, 19, 26.)

Vaides was eventually served with the warrant on June 7, 2007, and taken into custody. On June 21st, Vaides' arraignment was rescheduled for July 5, 2007. However, on June 25th, his arraignment was postponed again. The docket indicates that the State requested postponement in order to consolidate this case with an unrelated case involving Vaides and nine other individuals (Case No. 107156020). Giles was not a defendant in the other case. Nor were any of the other co-defendants (besides Vaides) implicated in

[2] The State previously had filed a criminal information statement against Vaides on January 23, 2007 (Case No. 207023003). (R. 36-38.) In late February 2008, the prosecutor realized that the State had mistakenly charged the same case twice. He entered a *nolle prosequi* on the criminal information and proceeded on the later indictment. (See T. 4-5 (Vol. IV).)

the case involving Giles. The State ultimately entered a *nolle prosequi* in the unrelated case against Vaides.

Vaides' appointed counsel, Mr. Thomas Chrisler, entered his appearance in this case on June 28, 2007. (R. 58.) Vaides was arraigned on July 26, 2007. At the arraignment, the court set a consolidated jury trial for November 5, 2007.

Vaides filed a motion for speedy trial on September 4, 2007. (R. 60.) Over Vaides' repeated objections, however, his trial date was postponed four times, by three different judges:

The first postponement occurred on November 5, 2007. The State's counsel told the reception court that he wanted to discuss a "package deal" with Vaides' attorney. He also reported that Giles had not been served with a summons. (T. 4-5 (Vol. I).) Apparently speaking about Vaides' other case, the prosecutor asked Vaides' counsel to "address Hicks" (T. 5 (Vol. I)), referring to *State v. Hicks*, 285 Md. 310 (1979), in which the Maryland Court of Appeals held that criminal charges must be dismissed if the defendant is not brought to trial in circuit court within 180 days. Vaides' counsel made clear that Vaides was "not waiving Hicks." (T. 5 (Vol. I).) The State's counsel then remarked that he believed *Hicks* was "either passed or waived" with respect to "the other matters." (T. 6 (Vol. I).) The administrative court (Stewart, J.) granted the requested postponement, stating: "I'm treating as both postponement [*sic*], and it's to consolidate everything." (T. 8 (Vol. II).) The court reset trial for February 26, 2008.

On February 26th, the State's counsel sought another postponement, citing difficulties in coordinating the ten co-defendants in the unrelated case. He explained that one co-defendant had not yet been arraigned, and that several co-defendants still needed their cases paneled out to attorneys. (T. 5 (Vol. III).) He concluded that the parties were "looking for a June [2008] trial date, unfortunately. Just because of everybody's schedule." (T. 5-6 (Vol. III).) The court, recognizing that consolidation with the other case was delaying this case, and that none of the co-defendants in the other case were involved in this case, asked whether anything could be done to resolve this case. (T. 4, 6 (Vol. IV).) The prosecutor answered that he did not believe so, explaining: "it would have to be a package deal for Mr. Chrisler's client and, at this point, I'm not interested in severing." (T. 6 (Vol. IV).) Vaides' counsel objected to postponement of the consolidated cases, explaining that Vaides had already been in custody for nine months and was eager to proceed with this case. (T. 7 (Vol. IV).) When the court inquired whether all defendants were "past Hicks in these matters," the State's counsel responded, in relevant part: "Vaides has failed to appear; therefore making Hicks moved." (T. 8 (Vol. IV).) The administrative judge warned the prosecutor that he must take more aggressive steps to schedule his cases for trial. (See, *e.g.*, T. 5 (Vol. V)) ("[I]f you just keep percolating along by bringing them in on a trial date, you're never gonna get them tried."). However, the court (Miller, J.) ultimately agreed to postpone the consolidated trial. (T. 8 (Vol. V).)

On June 16, 2008, Vaides' trial was postponed a third time. The State's counsel informed the court that he had offered Vaides a deal to resolve all charges. (T. 46-47 (Vol. VII).) The State proposed to *nolle prosequi* this case, and accept a plea in the other case. After a break, Vaides' counsel informed the court that Vaides had declined the State's offer, and that Vaides again was "not waiving [the] Hicks" requirement. (T. 68-69 (Vol. VII).) In the afternoon hearing, the court (Cox, J.) stated that the *Hicks* date for Vaides' wiretap case had passed, and that the *Hicks* date for this case "doesn't apply." (T. 110 (Vol. VIII).) The court decided to postpone the case again, charging the postponement to the State and attributing the cause to "consolidation." (R. 66.) The court scheduled trial for September 10, 2008. (T. 112 (Vol. VII).)

The State requested another postponement on September 8, 2008. During the hearing on that day, the State's counsel explained that one co-defendant in Vaides' other case had been arrested later than the others, and that his attorney needed additional time to review the discovery. (T. 5-6 (Vol. IX).) The prosecutor represented that Vaides' counsel, who was not present at the hearing, did not object to postponing the unrelated case. (T. 6 (Vol. IX).) The prosecutor also requested that the cases against Giles and Vaides remain consolidated. (T. 8-9 (Vol. IX).) Giles' attorney objected to postponing this case, but the court concluded that Giles had previously waived *Hicks*. The court then determined that *Hicks* did not apply in Vaides' case because of his earlier alleged failure to appear. (T. 9 (Vol. IX).) The court (Cox, J.) granted the requested postponement and set Vaides' trial for December 11, 2008. (T. 10 (Vol. IX).)

On December 11th, this case was transferred to Judge Miller for trial the next day. However, Vaides was not transported from his facility to the court, and trial was continued until December 15th.

C. Trial Proceedings

The State finally brought Vaides to trial on December 15, 2008—almost two years after the events in question and nearly 23 months after his indictment. Despite the lengthy delay, the court denied Vaides' pre-trial motion to dismiss the case on *Hicks* or speedy trial grounds. (See 1T. 4-8.)

Detective Cannida and Robert Giles were the State's primary witnesses at trial.[3] Detective Cannida testified in two capacities. First, he testified as a fact witness about the events he actually witnessed on December 29, 2006. Second, he testified as an expert in "street level narcotics distribution." (1T. 135-36.) In his expert capacity, Cannida offered extensive testimony as to how street-level drug operations "usually" or "generally" worked. (See 1T. 147-52 (describing roles of "runner," "money person," "hit off" person, and "lookout" and explaining concepts of "stash house" and "stash location").) Much of this testimony was irrelevant to this case. For example, Detective Cannida testified about a hypothetical "stash house" where drugs were kept: "it could be just an everyday person letting somebody use their house to stash the drugs in." (1T. 148.) He then explained that, although drugs start out in a "stash house," they would be moved to a "stash location" such as "an alley," "inside of a car," or "a drain spout." (1T.

[3] The State also called Detective Michael Carney of the arrest team, and introduced a stipulation concerning the chemical identity of the cocaine recovered from the baby stroller.

149.) Over defense counsel's objection, Detective Cannida testified that one typically would expect a "stash location" to contain only a fraction of the amount of drugs stored in the central "stash house." (1T. 149-50.)

Detective Cannida's dual role as a fact witness and expert witness converged most visibly during his testimony about the responsibility of a "lookout" in organized drug operations. As a fact witness, Detective Cannida testified that he had observed Vaides "look[ing] up and down the street." (1T. 139.) Then, relying on his "training, knowledge, and experience," and over defense counsel's objection, he testified that, if police had driven into the area while Vaides was standing on the sidewalk, Vaides "probably would have alerted Mr. Giles" by, for example, yelling out "time-out, -5-0-, [or] jump out," which are code words for "the police are coming." (1T. 139-40.) The court allowed Detective Cannida to offer this expert opinion, even though he and Detective Carney both testified that they had never seen Vaides make any effort to alert Giles to police. (See 1T. 144, 175, 181-83; 2T. 15.)

Because Detective Cannida had observed minimal interaction between Vaides and Giles, the State relied heavily on Giles to explain Vaides' involvement in the so-called "conspiracy." But the State had reason to be concerned that the jury might find Giles less than credible. Even on direct examination, Giles' testimony was rife with uncertainties and inconsistencies:

> Q. Okay. Who were you working for that day when you were selling drugs?
> A. Myself.
> Q. And who else?

A. Me and -- it wasn't nobody selling drugs, but me.
Q. There was nobody out there selling drugs; but you.
A. No.
Q. Do you recall giving a statement to myself and to DEA Agents on Thursday that would be different?
A. That I was selling drugs myself and somebody was out there watching my back.
Q. Okay. Describe for the ladies and gentlemen of the jury what you described to me on Thursday.
A. He was watching my back, but he wasn't really out there doing it. He was watching my back while I was out there slinging, but I mean it wasn't really nothing.
Q. Who supplied you with the drugs that you were slinging?
A. I mean he gave me some, but it wasn't, I mean --
Q. Who supplied you with the drugs that you were slinging?
A. This man right here.
Q. Whose this man right here?
A. I don't know his name. I don't know what you all call him.

(1T. 187-88.)

Giles admitted that he had never even met Vaides before the day in question. He also admitted that he had retrieved the drugs himself from under a gutter behind the white truck (1T. 189), and that he had hoped to make $100 through his dealings:

Q. Okay. So, you were looking to make a hundred dollars. Who was going to pay you that hundred dollars?
A. Me when I get paid out of the pack.
* * *
Q. Okay. Who was going to pay you off that pack since you didn't bring that pack there yourself?
A. I didn't know who it was going to be.
Q. Mr. Giles, do you remember giving me a statement on the --
A. Yeah, I mean --
Q. Okay. So, you remember that statement, correct?
A. Yeah.
Q. Okay. Who was going to pay you the hundred dollars for selling the drugs?
A. This man right here.
Q. This man right there.

A. Yeah.
Q. Who is that man right there?
A. I don't know his name. You know his name more than I know his name.

(1T. 190.)

Giles' explanation as to how his two bags of cocaine ended up inside the baby stroller was utterly absurd: "I threw them and the wind blew them in the stroller or whatever." (1T. 200.) It also contradicted the testimony of both detectives: Detective Cannida witnessed Giles grab the stroller after he emerged from the store (1T. 144); Detective Carney then saw Giles "jam[ ] his hand down in the baby stroller" in an attempt to hide the drugs from police. (2T. 8-9.)

Giles did not fare any better during cross-examination. He acknowledged that he had sold drugs many times before December 29, 2006. (1T. 212.) But he reiterated that he had never seen nor spoken with Vaides before that day. (See 1T. 206 ("I don't know him at all. I didn't know him until that day.").) He also elaborated on his involvement with the baby stroller, claiming that the woman pushing the stroller had in fact been a customer who purchased drugs from him. (1T. 218.)

By the time of trial, Giles had been incarcerated for almost two years. (1T. 219.) Giles explained that, in the days leading up to Vaides' trial, he had been offered a deal to plead guilty to an eight-year sentence, with six years suspended. (1T. 219-20.) That deal—which awarded credit for time served—allowed Giles to walk out of jail almost immediately after testifying against Vaides. (See 1T. 220-21.)

Giles' questionable testimony and his last-minute plea subjected his credibility to sustained attack by the defense at trial. The State realized that Giles' testimony was important to its case, however, and therefore repeatedly sought to rehabilitate his credibility and authority before the jury. In both opening and closing statements, the State told the jury that it was being given a "rare opportunity" to hear testimony from a co-conspirator. (See 1T. 126 ("A civilian witness is unique to a narcotics case, but this person is actually even more unique because this person was there . . . you're going to have a rare opportunity to hear somebody besides police officers tell you what happened that day."); 2T. 51 ("[Y]ou had a rare opportunity, you heard actually from somebody who admittedly tells you that they sell drugs and admittedly told you how drugs are sold in Baltimore City.").)

Vaides' counsel moved for acquittal after the State's case and again after the defense rested. (2T. 17-19.)[4] The court denied both motions. The court finished instructing the jury on the five charges against Vaides at approximately 11:00 a.m. on the second day of trial. The jury deliberated for two hours (2T. 61), and then recessed for lunch. Near the end of the recess, the court informed counsel that the foreperson had communicated with the court—off the record—that the jury was confused about the conspiracy to distribute charge (on which Vaides was ultimately convicted). (2T. 65.) Around the same time, the jury submitted a written question asking whether Counts

[4] The defense called no witnesses.

Three and Five were the same as Count Four and, if not, requesting that the court explain the difference. (2T. 65-66; R. 72.)

By agreement of counsel, the court reread the five charges to the jury. (2T. 67.) The court then asked the jury whether it wished the court to reread the substantive instructions for each count. The foreperson responded "Yes . . . We do not understand conspiracy and the possession. They're having a problem with it." (2T. 67.) The court reread its previous instructions and sent the jury back to deliberate.

Approximately twenty minutes later, the jury submitted a note stating that it could not reach agreement. (2T. 75-76; R. 70.) The court proposed to counsel that it repeat its general instructions about the duty to deliberate.[5] The court brought the jury out and asked whether it had reached agreement on any count. (2T. 77.) The foreperson reported that the jury was deadlocked only on Counts Four and Five. (2T. 77.) The court then delivered an *Allen* charge, and the jury indicated that it did not believe further deliberations would be helpful in reaching agreement on the deadlocked counts. (2T. 77-79.) Both counsel agreed to take a partial verdict on Counts One, Two, and Three. The foreperson read the partial verdict: the jury found Vaides not guilty on Counts One and Two, and guilty on Count Three. (2T. 81; R. 73.)

On January 28, 2009, the court sentenced Vaides to fourteen years' imprisonment. Giles was to be released immediately after Vaides' trial.

[5] It is unclear whether defense counsel consented to the court's proposed course of action. After the State's counsel noted his doubts about such an instruction, the record cut off. (2T. 76.) Recording resumed as the court spoke to the jury.

ARGUMENT

As demonstrated by the evidence, the jury's communications to the court, and the final verdict, this was an extremely close case. It was undisputed that Vaides had never even met his alleged co-conspirator before the date in question. It also was undisputed that Vaides had not engaged in any drug sales, and that he did not physically possess any drugs on his person. Yet the State sought to hold Vaides responsible for a large role in the offense. What is more, the State's witnesses were not entirely convincing: The police had observed very little interaction between Vaides and Giles, and Giles' testimony—although critical to the State's case—was manifestly unreliable in several respects.

As explained below, the trial court made three serious errors, each of which allowed the State to overcome or conceal these deficiencies in its case. First, the court permitted Detective Cannida to offer an "expert" opinion about Vaides' supposed involvement as a lookout, even though that opinion was beyond the proper realm of his expert testimony and had no basis in fact. Second, the court prevented the defense from laying bare before the jury Giles' motivation for cooperating with the State. Finally, by denying Vaides' motion to dismiss, the court rewarded the State's unreasonable decision to tie resolution of this case with Vaides' unrelated case. The resulting delay seriously hampered Vaides' defense.

I. The Trial Court Erred By Permitting The State To Offer Highly Prejudicial Expert Testimony About Vaides' Purported Role As Giles' Lookout

A court's decision to admit expert testimony is reviewable on appeal and will be reversed if it is founded on an error of law or if the trial court clearly abused its

discretion. *Cook v. State*, 84 Md. App. 122, 138 (1990). Here, the trial court erred by permitting Detective Cannida to offer unfounded, speculative testimony about Vaides' supposed role as a lookout for Giles. Detective Cannida's testimony was beyond the scope of proper expert testimony, lacked any factual foundation (indeed, it was contradicted by the evidence), and improperly encroached on the jury's role as factfinder.

As noted above, the court afforded Detective Cannida significant leeway in allowing him to testify how drug schemes "usually" or "generally" operated. (See 1T. 147-52.) But his testimony strayed far beyond its permissible limits. The most glaring and prejudicial example concerned his testimony about the supposed role of a "lookout":

> Q. Okay and then you described somebody that could be a look out. Could you describe that a little more appropriately for the ladies and gentlemen of the jury?
>
> A. A lookout is basically somebody whose, whose looking out for police presence. That's like their main job to watch, is watch the streets there and usually they'll have their back towards, towards the drug deal and constantly looking up and down the street. I mean you can, I can almost compare to that you was looking up and down the street for a hack or if you seen somebody you know that's going to ride past or somebody that's going to meet you there. They constantly, like they're looking for the bus. Keep looking for the bus. They're looking for the police and it can be a marked car or you know drug dealers sometimes, they try to memorize our unmarked cars also.
>
> Q. And what is a lookout going to do if they notice police presence?
>
> A. They're going to sometimes discreetly, sometimes they're not discreet and sometimes they just yell out or sometimes discreetly yell out to their friend whose doing the transactions that the police are coming down the street or that the police pulled up.
>
> Q. And when they yell that out, what happens? What do the other members in the organization do?

A. Either scatter, run or just be a number of things.

(1T. 151-52.)

The critical point came when Detective Cannida applied his supposed expertise on "lookouts" to his judgment about Vaides' participation in Giles' crime. He testified that he had observed Vaides "look[ing] up and down the street." (1T. 139.) Then, over defense counsel's objection, he offered the following opinion on Vaides' guilt:

> Q. And based on your training, knowledge, and experience, what would happen if police would have drove into the area?
>
> A. He [Vaides] would have –
>
> MR. CHRISLER: Objection, Your Honor.
>
> THE COURT: Overruled.
>
> THE WITNESS: He probably would have alerted Mr. Giles by, they have a couple of names; time-out, -5-0-, jump out.
>
> Q. So, they would have – and what are those nicknames for?
>
> A. For the police are coming.

(1T. 139-40.)

The court's decision to permit this exchange was erroneous and highly prejudicial. More specifically, it failed to comport with two independent requirements of Maryland's expert testimony rule. See Md. Rule 5-702.

First, Detective Cannida's opinion was an inappropriate subject of expert testimony. See Md. Rule 5-702(2). A trial court has no discretion to admit an expert opinion that is incompetent and unfairly prejudicial. *Gauvin v. State*, -- Md. --, No. 148,

September Term 2008, slip op. at 13 (Dec. 18, 2009); *Cook v. State*, 84 Md. App. at 138. In most instances, as in this case, an expert may testify only to a certain pattern of conduct, or to the presence of certain factors, leaving it to the jury to apply that expertise to the facts of the case. *Cook*, 84 Md. App. at 142. Here, however, the trial court permitted Detective Cannida to state a conclusion about Vaides' guilt, without providing any appreciable help to the jury's understanding of the issues. The jury certainly was as capable as Detective Cannida in determining whether Vaides' looking out on the street might be in service of Giles. The court's decision to allow Detective Cannida to testify about the conclusion he drew from that evidence, and to allow him to ground that conclusion in his expert "training, knowledge, and experience" (1T. 139), was extremely damaging. See *Cook*, 84 Md. App. at 140 ("To permit one clothed by the court with the mantle of an 'expert' in such matters to state his conclusion was highly prejudicial.").

Detective Cannida's testimony also lacked any factual basis. See Md. Rule 5-702(3); *Bohnert v. State*, 312 Md. 266, 274-75 (1988) ("no matter how highly qualified the expert may be in his field, his opinion has no probative force unless a sufficient factual basis to support a rational conclusion is shown"). There was no evidence at trial—none—that Vaides ever attempted to alert Giles to the police, even though he was presented with numerous opportunities to do so. The arrest team was already patrolling the area when Detective Cannida set up surveillance. (1T. 158.) The team then made two separate attempts to apprehend suspected purchasers nearby. (1T. 140.) Finally, the officers moved in to arrest Giles. (1T. 175.) Giles observed the police and attempted to

flee. But both Detective Cannida and Detective Carney told the jury that Vaides remained standing silent on the sidewalk the entire time. (1T. 144, 175, 181-83; 2T. 15.) Thus, the undisputed facts flatly contradicted Detective Cannida's speculative expert opinion about what Vaides "would have" done had "police . . . drove into the area." (1T. 139-40.)

This Court's decision in *Cook v. State* is highly instructive. 84 Md. App. 122 (1990). In *Cook*, the Court reversed various narcotics-related convictions, including conspiracy convictions, because the trial court had admitted improper expert testimony. Officers had raided a house and seized various items associated with a cocaine distribution operation. *Id.* at 127-28. At trial, an officer opined—based solely on the seized evidence and the defendants' locations in the home at the time of the raid—as to which role each defendant had played in the alleged drug operation. *Id.* at 135-36. This Court held that the trial court had committed reversible error in admitting the officer's testimony. The Court reasoned that the testimony was unduly prejudicial, because it effectively allowed the officer to express an opinion on guilt, without providing any appreciable help to the jury. *Id.* at 137-38. In one defendant's case, this error was compounded by the complete absence of factual support for the officer's conclusion that the defendant had acted as a distributor. *Id.* at 143.

Detective Cannida's expert testimony—which similarly opined about the supposed role of a defendant in a multi-person drug operation—also was admitted improperly. As in *Cook*, Detective Cannida's opinion invaded the jury's province by unnecessarily

stating an ultimate conclusion on Vaides' alleged involvement in a drug conspiracy. Also as in *Cook*, this error was compounded by the complete absence of evidence to support the detective's stated conclusion.

The trial court's admission of Detective Cannida's improper testimony was especially prejudicial for two additional reasons. First, it laid the foundation for the jury's only path to conviction. During trial, the State had suggested two possible roles played by Vaides in the alleged conspiracy: (1) Vaides supplied drugs by directing Giles to a drug "stash," and then shared in the proceeds of Giles' sales, and (2) Vaides acted as Giles' lookout. (*E.g.*, 2T. 54.) There was ***no*** evidence that Vaides was directly involved in any drug transaction. But the jury found Vaides "not guilty" on the possession charges, despite the court's detailed instructions on constructive possession and the prosecution's ardent pursuit of that theory. (See 2T. 31; 2T. 36-37 ("Mr. Vades [*sic*] controlled the drugs. He possessed the drugs because he controlled the drugs.").) The jury clearly did not believe the State's first theory, that Vaides owned or controlled the drugs sold by Giles. Thus, the divided verdict necessarily reflects that the jury found Vaides guilty on the single conspiracy charge ***only*** because it believed he had acted as Giles' lookout. But see *Fleming v. State*, 373 Md. 426, 433 (2003) ("It is a universally accepted rule of law that mere presence of a person at the scene of the crime is not of itself sufficient to prove the guilt of that person . . . .").

Second, absent Detective Cannida's expert testimony, the jury easily could have disregarded Giles' testimony on this point. Giles' testimony about Vaides' supposed

involvement as a lookout was far from convincing. Giles initially testified that he had been working alone that day. (1T. 187.) It was only after the State's counsel reminded him of his prior statement to prosecutors, that he changed his story to add that "somebody was out there watching my back." (1T. 187.) Even then, he qualified his testimony: ". . . but he [Vaides] wasn't really out there doing it. He was watching my back while I was out there slinging, but I mean it wasn't really nothing." (1T. 187-88.) The jury also had heard Giles admit that he had never even met Vaides prior to December 29, 2006, and that he did not know Vaides' name (1T. 190, 206)—both facts making it less likely that Giles had relied on Vaides as his first line of defense in evading police. Under these circumstances, the prejudice resulting from the court's decision to allow Detective Cannida's expert opinion cannot be overstated.

If that were not enough, much of the remainder of Detective Cannida's "expert" testimony also was irrelevant to this case, and risked creating the mistaken impression in the jury's mind that Giles and Vaides were part of a well-organized, complex, and multi-person drug operation. For example, Detective Cannida's testimony about "stash houses" and "stash locations" suggested to the jury that there existed some centralized location where Vaides and/or Giles kept an even larger quantity of drugs—even though no evidence to that effect was introduced at trial. (See 1T. 147-52; see also 2T. 43 (defense counsel's closing argument: "Now, Detective Cannida was, was admitted as an expert. What he said is, essentially drug dealers aren't really working alone. There is somebody touting or yelling, there's a lookout, there's a money man and *describing all of these*

different people that don't appear to be present in this scenario.") (emphasis added).) Detective Cannida's broader testimony about the various roles "generally" present in drug operations, even though largely irrelevant, provided a tidy context for his speculative "lookout" opinion.

The trial court erred by admitting Detective Cannida's expert opinion concerning Vaides' supposed role as a lookout, and therefore Vaides' conviction must be reversed.[6]

II. The Trial Court Erred By Preventing Defense Counsel From Probing Giles' Motivation In Testifying For The State

The right to confront witnesses, guaranteed by both the United States and Maryland Constitutions, encompasses "the right to cross-examine a witness about matters which affect the witness's bias, interest, or motive to testify falsely." *Marshall v. State*, 346 Md. 186, 192 (1997); see U.S. Const. amend. VI; Md. Const. Decl. of Rts. art. 21. Defendants in criminal cases are given wide latitude to cross-examine adverse witnesses, especially when the witness is a co-defendant or accomplice. *Smallwood v. State*, 320 Md. 300, 307-08 (1990); see also *Alford v. United States*, 282 U.S. 687, 692 (1931).

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[6] The trial court's error in this respect was not an isolated occurrence. Both of the State's primary witnesses were permitted to impermissibly speculate about Vaides' thoughts or actions. During the State's direct examination of Giles, the court allowed Giles to testify as to what Vaides must have been thinking when Giles allegedly handed Vaides some money:

> Q. And after you gave him money, he realized that the 25 pack on the street was sold.
> A. Yeah.
> MR. CHRISLER: Objection.
> THE COURT: Overruled.

(1T. 198.)

While a trial court may impose reasonable restrictions on cross-examination to prevent harassment, prejudice, or confusion, such restrictions may ***not*** be imposed until after the defendant has reached a "constitutionally required threshold level of inquiry." *Smallwood*, 320 Md. at 307 (internal quotation omitted).

In this case, the trial court erred by prohibiting defense counsel from exploring Giles' motivation for testifying against Vaides:

> Q [to Giles]: Do you believe that if you testified here that my client had nothing to do with your selling drugs out there that day, do you believe you would still have an offer of ten years with eight years suspended?
>
> MR. PEISINGER: Objection, Your Honor.
>
> THE COURT: Sustained.

(1T. 222.)

By sustaining the State's objection, the court prevented the jury from learning the information necessary to make an informed assessment of Giles' credibility:

> The crux of the inquiry insofar as its relevance is concerned, is the witness's state of mind. What is essential to the preservation of the right to cross-examine is that the interrogator be permitted to probe into whether the witness is acting under a hope or belief of leniency or reward.

Brown v. State, 74 Md. App. 414, 421 (1988) (quoting *Fletcher v. State*, 50 Md. App. 349, 359 (1981)); see also *Hoover v. Maryland*, 714 F.2d 301, 305 (4th Cir. 1983) (affirming issuance of habeas corpus writ to Maryland prisoner where defense counsel had been permitted to introduce written immunity letter at trial, but was prevented from developing record as to witness's subjective understanding of agreement with government: "The vital question, which the defendant is constitutionally entitled to

explore by cross-examination, is what the *witness* understands he or she will receive, for it is this understanding which is of probative value on the issue of bias.").

Here, the critical issue—for purposes of evaluating Giles' credibility—was whether Giles was testifying "under a hope or belief of leniency or reward." *Brown*, 74 Md. App. at 421. It is immaterial that Giles had testified already as to what his sentence might be, or what he faced as a maximum sentence.[7] What mattered was whether Giles ***believed*** he was receiving a better deal by testifying against Vaides.

The court's exclusion of that topic prevented the jury from learning Giles' subjective understanding of his cooperation agreement. For one thing, the court prevented Giles from addressing the odds that he would ultimately receive a reduced sentence. On direct examination, the prosecutor had asked Giles: "Q. And isn't it true that you decided on Thursday to make a statement to me to *maybe put yourself in a better position in your case*; is that correct?" (1T. 202 (emphasis added).) The prosecutor's question made a reduced sentence sound like a mere ***possibility***; the question by Vaides' counsel sought to elicit Giles' belief about the ***probability*** of such a sentence. *Cf. Smallwood*, 320 Md. at 307 (constitutional right of confrontation encompasses bringing out the relevant remainder of statements introduced on direct questioning).

Defense counsel's question also addressed what Giles believed he had to do or say, if anything, in order to receive a reduced sentence. The jury had ***no*** information on

[7] Although there was some confusion on this issue at trial (see 2T. 47), the prosecution represented that Giles' offer involved an eight-year sentence, with six years suspended. (See 1T. 202, 2T. 50.)

that topic. Giles was never required to explain whether he was receiving a reduced sentence in exchange for agreeing to plead guilty himself, or for giving a pre-trial statement that implicated Vaides, or for testifying against Vaides at trial. The jury reasonably could have viewed Giles' testimony differently in each of those situations, but defense counsel was prohibited from fleshing out those crucial facts. *Cf. Marshall*, 346 Md. at 197-98 ("Where a witness has a 'deal' with the State, the jury is entitled to know the terms of the agreement and to assess whether the 'deal' would reasonably tend to indicate that his testimony has been influenced by bias or motive to testify falsely.").

The court's error in preventing defense counsel from confronting Giles on cross-examination was not harmless. Even the prosecutor acknowledged that Giles was a key witness for the State. (1T. 126, 2T. 51.) It was especially important for the jury to understand the strings attached to Giles' deal, because the inconsistencies and uncertainties in Giles' testimony demonstrated that he was just as likely to ***not*** implicate Vaides, as he was to testify against Vaides. In other words, Giles' credibility was a "central issue" in the case. *Martin v. State*, 364 Md. 692, 702-03 (2001) (finding reversible error); see also *Smallwood*, 320 Md. at 307 (same); *Fletcher*, 50 Md. App. at 360 (same). The court's error prevented the defense from exercising its constitutional right to confront witnesses and fully establishing before the jury that Giles was biased and motivated to lie about Vaides' involvement. See *Davis v. Alaska*, 415 U.S. 308, 318 (1974) ("On the basis of the limited cross-examination that was permitted, the jury might

well have thought that defense counsel was engaged in a speculative and baseless line of attack . . . .").

The court's error was compounded by the State's overreaching on the issue of Giles' credibility during summation. The State sought to prevent Vaides' counsel from cross-examining Giles, but then went to great lengths to vouch for Giles' bona fides:

> Now, they are the facts and if you listen to Mr. Chrisler and you want to think that Mr. Giles is a lying person that he would tell you anything in his interest, I would suggest to you, use that with caution because yes, was it in his interest to get a deal? Maybe, maybe not because to do that, he had to get up on that stand and tell you what happened and that's not an easy thing to do in Baltimore city with the client that we have because what is he labeled? He's labeled as a snitch okay and that's not an easy label to carry in Baltimore City. So, was it in his interest? Maybe or maybe not.

(2T. 50-51.)

The State's argument is a thinly veiled reference to the infamous "Stop Snitching" video that made Baltimore news around the time of trial. See, *e.g.*, *"Stop Snitching" Cameraman Gets 30 Years for Drug, Gun Crimes*, Washington Post, Aug. 21, 2008; *"Stop Snitching" Figure Charged With Gun Offense*, Baltimore Sun, Jan. 6, 2009. Of course, this case did not involve any accusations of retaliation, violence, or witness intimidation. In fact, Giles had earlier testified that the decision whether "to testify or to keep [his] mouth shut" had been an "easy decision" for him. (1T. 223.) The prosecutor's comments were utterly speculative and improper, *Lee v. State*, 405 Md. 148 (2008), and contributed to the prejudice that Vaides suffered by not being able to probe Giles' reasons for testifying on behalf of the State.

"That a witness may be cross-examined on such matters and facts as are likely to affect his credibility . . . is a fundamental concept in our system of jurisprudence." *DeLilly v. State*, 11 Md. App. 676, 681 (1971). Here, the trial court violated this fundamental principle when it prohibited Vaides' counsel from cross-examining Giles about his understanding of his cooperation agreement. Vaides' conviction should be reversed on this ground as well.

III. The State's Delay In Scheduling Vaides' Trial Violated *Hicks* and Vaides' Constitutional Rights To A Speedy Trial

The almost two-year delay in scheduling Vaides' trial violated *Hicks* and Vaides' federal and state constitutional rights to a speedy trial. The court erred by denying Vaides' pre-trial motion to dismiss the case on those grounds. (See 1T. 4-8.)

At trial, Vaides' counsel walked through the relevant chronology of events, and contended that the starting date for *Hicks* purposes was June 28, 2007, when counsel had entered his appearance. (1T. 5.) The State's counsel took the position that Vaides could not "benefit from the Hicks rule if he [was] not charged with 180 days based upon his failure to appear prior to 6/28." (1T. 7.) The court concluded:

> I'm going to deny the motion. I don't find that there is a violation of Hicks based on the recitation just given [to] me for a number of reasons. The postponements that were granted were either for consolidation for both or for advanced postponements. There is an FTA and an FTA Warrant, failing to appear back in March. That in and of itself may effect [*sic*] some calculation as to when the 180 days begins to run for Hicks, but it doesn't, I don't believe really impact over all the time frame. Today is the 15th of December, 2008 and we are ready for trial and ready to proceed. The motion to dismiss for failure to allow a speedy trial will be denied.

(1T. 8.) As explained below, the court's ruling was erroneous as to both the *Hicks* violation and the violation of Vaides' speedy trial rights.

A. The Trial Court Improperly Denied Vaides' Motion To Dismiss Based On The *Hicks* Violation

Maryland law requires that a criminal trial in circuit court be scheduled within 180 days after the earlier of the defendant's arraignment or defense counsel's appearance. See Md. Code, Crim. Proc. § 6-103; Md. Rule 4-271. In *State v. Hicks*, 285 Md. 310 (1979), the Court of Appeals "resolved once and for all any doubt that the trial date requirement of Rule 4-271 is mandatory and that dismissal is ordinarily the appropriate sanction for violation of that requirement." *State v. Cook*, 322 Md. 93, 96-97 (1991). The *Hicks* rule "operate[s] as a prophylactic measure to further society's interest in the prompt disposition of criminal trials." *State v. Brown*, 307 Md. 651, 657 (1986) (internal quotation omitted).

Vaides' trial counsel entered his appearance on June 28, 2007. (R. 58.) Vaides was arraigned on July 26, 2007. Thus, June 28, 2007 is the relevant starting date, and the 180-day period ended on December 26, 2007. Vaides' trial did not take place for almost an additional year beyond the deadline declared mandatory by *Hicks*.

Extensions beyond the 180-day deadline can be granted only by the administrative judge or that judge's designee for "good cause" shown. *State v. Brown*, 355 Md. 89 (1999). The critical postponement is that which first carries the case beyond the 180-day deadline. *Id.* at 108-09. A defendant must show that the postponement constituted a clear abuse of discretion or lacked good cause as a matter of law. *Id.* at 108.

Here, the trial court failed to analyze the propriety of the key extension from November 5, 2007, to February 26, 2008, which first put Vaides' trial beyond December 26, 2007, and outside of the 180-day *Hicks* period. Instead, the court lumped all four postponements together, stating that they were "either for consolidation for both or for advanced postponements." (1T. 8.) It did not assess whether the November 5th postponement in particular, or the resulting length of delay, was supported by good cause.

In any event, the administrative court clearly abused its discretion in granting the State's requested postponement on November 5th. It inexplicably treated the request as a joint request to consolidate, even though Vaides' counsel made clear that Vaides was "not waiving Hicks" (T. 6 (Vol. I)), and even though it was the State that wished to consolidate this case with Vaides' other, unrelated case. The court apparently also did not take into account the State's failure to serve Giles with a summons to appear on November 5th. (T. 4-5 (Vol. I).)

The trial court suggested, and the State and the pre-trial courts evidently believed, that Vaides' failure to appear for his rescheduled arraignment in March 2007 had some effect on the *Hicks* analysis. (See T. 8 (Vol. IV) (State's counsel: "Vaides has failed to appear; therefore making Hicks moved."); T. 9 (Vol. IX) (administrative court: *Hicks* did not apply because of Vaides' earlier failure to appear); but see 1T. 8 (trial court: "That in and of itself may effect [*sic*] some calculation as to when the 180 days begins to run for Hicks, but it doesn't, I don't believe really impact over all the time frame.").) At the November 5th hearing in particular, the State's counsel asserted (somewhat cryptically)

that "[i]n the other matters they have either passed or waived [*Hicks*]." (T. 6 (Vol. I).) But Vaides' failure to appear was prior to the start of the 180-day period, and therefore inconsequential.

Moreover, as trial counsel explained, and the prosecution did not dispute, Vaides contended that he had not received notice of his rescheduled arraignment. And significantly, the bail forfeiture associated with Vaides' failure to appear was ultimately stricken. The court apparently was satisfied that Vaides had established "reasonable grounds" for his absences. See Md. Code, Crim. Proc. § 5-208(b)(1) ("a court that exercises criminal jurisdiction shall strike out a forfeiture of bail or collateral and discharge the underlying bail bond if the defendant can show reasonable grounds for the defendant's failure to appear"); Md. Rule 4-217(i)(2) ("If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (4)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (3) of this section."). Vaides' case is thus distinguishable from those cases in which a defendant's failure to appear operated as a clear consent to violation of the 180-day rule. *E.g.*, *Dorsey v. State*, 349 Md. 688 (1998) (where defendant, on evening before first day of trial, surrendered on charges pending in another county, defendant's absence was voluntary and tantamount to seeking a trial date in violation of *Hicks*); *State v. Parker*, 347 Md. 533

(1995) (defendant's failure to appear on first day of trial provided good cause for postponement beyond 180 days).

The Court should dismiss this case because Vaides was not brought to trial within the mandatory 180-day period, and the administrative court's initial postponement was a clear abuse of discretion lacking good cause.

B. The Trial Court Improperly Denied Vaides' Motion To Dismiss For Failure To Allow A Speedy Trial

The near two-year delay also violated Vaides' constitutional rights to a speedy trial. See U.S. Const. amend. VI; Md. Const. Decl. of Rts. art. 21. This Court performs an independent constitutional analysis when reviewing the denial of a speedy trial motion to dismiss. *Glover v. State*, 368 Md. 211, 220-21 (2002). In *Barker v. Wingo*, the Supreme Court established a four-factor balancing test that "necessarily compels courts to approach speedy trial cases on an *ad hoc* basis." 407 U.S. 514, 530 (1972). The factors outlined by the Court include: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.*; see also *Vermont v. Brillon*, 129 S.Ct. 1283, 1290 (2009) (applying *Barker* four-factor test). Taken individually and together, those factors weigh in Vaides' favor.[8]

First, even excluding the time associated with Vaides' failure to appear at his arraignment (March 21–June 7, 2007), Vaides suffered twenty months of pre-trial delay. Maryland courts have repeatedly held that even shorter periods of delay are

[8] The Court of Appeals has recognized that a defendant's speedy trial rights can be violated, even in the absence of an affirmative demonstration of prejudice. See *Jones v. State*, 279 Md. 1, 16-17 (1976) (citing *Moore v. Arizona*, 414 U.S. 25, 26 (1973)).

presumptively prejudicial. See *Divver v. State*, 356 Md. 379, 389-90 (1999) (delay of one year and sixteen days violated right to speedy trial) and cases cited therein. Moreover, less delay is tolerated where the case involves "an ordinary street crime," rather than a "serious, complex conspiracy charge." *Barker*, 407 U.S. at 531. The "conspiracy" charged in this case was not the least bit complex: the events in question lasted between half an hour and forty-five minutes (1T. 153), only two individuals were implicated, and only three witnesses testified at trial.

The second factor also weighs in Vaides' favor. The lengthy pre-trial delay was overwhelmingly attributable to the State and its desire to consolidate this case with Vaides' unrelated case. Indeed, the court admonished the State for its approach in handling the consolidated cases. (See T. 5 (Vol. V) ("[I]f you just keep percolating along by bringing them in on a trial date, you're never gonna get them tried.").) All of the pre-trial delay in this case should be assessed against the State.

Third, Vaides diligently asserted his right to a speedy trial. His counsel made a motion for speedy trial on September 4, 2007. (R. 60.) Counsel repeatedly asserted Vaides' position in subsequent postponement hearings. (See T. 5 (Vol. I) (November 5, 2007: "my client is not waiving Hicks"); T. 7 (Vol. IV) (February 26, 2008: objecting to postponement, noting Vaides' nine-month custody and desire to proceed to trial); T. 69 (Vol. VII) (June 16, 2008: "We are not waiving Hicks.").) On the day of trial, counsel

moved to dismiss on speedy trial grounds. (1T. 5-6.) The third *Barker* factor also weighs in Vaides' favor.[9]

Finally, Vaides was clearly prejudiced by the excessive delay. Certainly, Vaides was subject to an "oppressive pretrial incarceration" period of almost two years, and suffered "anxiety and concern" about the charges during that entire time. *Barker*, 407 U.S. at 532. Most importantly, Vaides' defense was impaired by the key witness's failure of memory. When defense counsel tried to question Giles on the timeline of events and the details of his interactions with the suspected purchasers, he received the following response:

> Q. All right. Do you remember selling to a man -- well, strike that. After 3:00, after you had been out there about a half an hour, about a half an hour after you met Mr. Vades [*sic*]—
>
> A. No, I don't know.
>
> Q. I'm sorry.
>
> A. I don't remember, I don't remember none of that. It was two years ago. That was two years ago.

(1T. 210. See also 1T. 212 (in response to question asking Giles where he sold to the second suspected purchaser: "I don't really remember.").) Typically, a loss of memory by the State's key witness might benefit the defendant. Here, however, Giles' lack of

[9] Vaides' attorney was not present at the final postponement hearing on September 8, 2008. The State's counsel represented that Vaides' counsel did not object to postponing the ***other*** case (T. 6 (Vol. IX)), but said nothing of his views concerning postponement of this case. Giles' attorney objected to postponement of this case, and there is no reason to believe that Vaides' counsel—who always similarly objected—now acquiesced. In any event, this final postponement contributed only two months to the total delay.

recollection cut the other way: defense counsel's probing of Giles' interactions with the suspected buyers was intended to highlight inconsistencies between his and Detective Cannida's testimony.

Vaides' counsel had already drawn out one major inconsistency. Giles testified unequivocally that he had ***not*** taken the second suspected purchaser—a female—behind the white truck to sell drugs to her. (1T. 211-12.) Giles said that he "d[id]n't really remember" where he had sold to her. (1T. 212.) Detective Cannida, on the other hand, testified equally as firmly that he in fact had observed Giles escort the second suspected purchaser behind the white truck. (1T. 170.) When asked by defense counsel why he had not included this critical detail in his report, Detective Cannida responded that he did not think it was necessary to do so, because it was the exact "same spot" where Giles had taken the first suspected purchaser. (1T. 170-71.) Clearly, either Giles or Detective Cannida was incorrect on this point. Absent the excessive delay in bringing this case to trial, Vaides' counsel may have been able to expose other important inconsistencies in the testimony of the State's two key witnesses. But Vaides was prejudiced in his ability to cross-examine Giles, who remembered only selective details of his transactions.

Generally speaking, the State should not be permitted to delay resolution of charges stemming from a simple, two-person street crime by two years simply by tying those charges to an unrelated case involving different events and different persons—

especially where the latter case is eventually *nol prossed*.[10] This Court should find that the excessive pre-trial delay violated Vaides' constitutional rights to a speedy trial, and dismiss the case on that basis.

CONCLUSION

For the reasons explained above, the trial court erred in three serious, reversible respects. The court's violations of *Hicks* and Vaides' speedy trial rights require that this Court dismiss the entire case. Alternatively, in light of the trial court's two erroneous and highly prejudicial evidentiary decisions, the Court should vacate Vaides' conviction on Count III.

December 30, 2009.

Respectfully submitted,

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[10] The State capitalized on the pre-trial delay by securing Giles' testimony in the days before trial. It is unimaginable that the State would have struck the same deal with Giles that it ultimately did had this case gone to trial on a timely basis. The near two-year delay allowed Giles to walk out of jail immediately after cooperating, while the State could take comfort in the fact that he had served a sentence of significant length.

CERTIFICATE OF COMPLIANCE

Pursuant to Md. Rule 8-112(c)(1), the foregoing Brief for Appellant was prepared in Times New Roman proportionally spaced 13-point font.

PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

I. CONSTITUTIONAL PROVISIONS

A. U.S. Const. amend VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and . . . to be confronted with the witnesses against him . . . .

B. Maryland Const. Decl. of Rts. art. 21

That in all criminal prosecutions, every man hath a right . . . to be confronted with the witnesses against him . . . and to a speedy trial by an impartial jury . . . .

II. STATUTES

A. Md. Code, Crim. Proc. § 5-208. Striking out forfeiture of bail or collateral.

. . . .

(b)(1) Subject to paragraph (2) of this subsection, a court that exercises criminal jurisdiction shall strike out a forfeiture of bail or collateral and discharge the underlying bail bond if the defendant can show reasonable grounds for the defendant's failure to appear.

. . . .

B. Md. Code, Crim. Proc. § 6-103. Trial date.

(a)(1) The date for trial of a criminal matter in the circuit court shall be set within 30 days after the earlier of:

(i) the appearance of counsel; or

(ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.

(2) The trial date may not be later than 180 days after the earlier of those events.

(b)(1) For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court:

(i) on motion of a party; or

(ii) on the initiative of the circuit court.

(2) If a circuit court trial date is changed under paragraph (1) of this subsection, any subsequent changes of the trial date may only be made by the county administrative judge or that judge's designee for good cause shown.

. . . .

III. RULES

A. Md. Rule 4-217. Bail bonds.

. . . .

(i) Forfeiture of Bond.

. . . .

(2) *Striking Out Forfeiture for Cause*. If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (4)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (3) of this section.

. . . .

B. Md. Rule 4-271. Trial date.

(a) Trial Date in Circuit Court.

(1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214(a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

. . . .

C. Md. Rule 5-702. Testimony by experts.

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.