IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-KA-01476-SCT

TIMOTHY A. WILLIAMS a/k/a TIMOTHY ALLEN WILLIAMS a/k/a TIMOTHY WILLIAMS

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	09/05/2019
TRIAL JUDGE:	HON. JOHN R. WHITE
TRIAL COURT ATTORNEYS:	KYLE DAVID ROBBINS PAUL CARROLL GAULT WILLIAM C. BRISTOW
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: JUSTIN TAYLOR COOK GEORGE T. HOLMES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LAUREN GABRIELLE CANTRELL
DISTRICT ATTORNEY:	JOHN WEDDLE
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 11/19/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., MAXWELL AND GRIFFIS, JJ.

MAXWELL, JUSTICE, FOR THE COURT:

¶1. Timothy Williams challenges the sufficiency and weight of the evidence supporting his felon-in-possession-of-a-firearm conviction. Though he argues his conviction should be reversed, Williams stipulated he is a felon and is prohibited from possessing firearms. And he admitted to a detective—in a recorded interview and then in a signed statement—that he

purchased a Colt .45 semi-automatic pistol "off the street." Williams also described how he loaned the pistol to a woman—a woman who later testified Williams indeed left a gun with her. Thus, the sufficiency and weight of the evidence support his conviction.

¶2. Williams also insists the State violated his constitutional and statutory speedy trial rights. And he likewise asks that his conviction be reversed on these grounds. But even if the eighteen-month delay between his arrest and trial was *presumptively* prejudicial, Williams failed to show any *actual* prejudice from the delay. So there is no constitutional or statutory speedy trial violation. We thus affirm Williams's conviction and his ten-year sentence as a habitual offender.

Background Facts and Procedural History

¶3. On February 4, 2018, two armed men scuffled with Kamal Ewing outside a Motel 6 on McCullough Boulevard in Tupelo, Mississippi. When Ewing fled, the men tried to force their way into the room of Ewing's girlfriend, Brandi Singleton. Seeing the armed men through a window, Singleton crawled across the motel floor to call 911. Tupelo Police Department patrol officers responded, but the two men had left. Singleton told the officers she recognized one of the men. She claimed that the man had raped her a week earlier. Singleton gave a brief written statement to officers describing the alleged rape and attempted motel-room entry.

¶4. Two weeks later, Detective Scott Floyd interviewed Singleton at Tupelo police headquarters. This time, she gave a longer and more detailed statement about the February 4, 2018 motel event and what had happened a week earlier. Singleton had since used

Facebook to identify her attacker, "YB Williams," a/k/a Timothy Williams. Singleton reported that a week earlier, on January 26, 2018, Williams forced his way into her motel room, zip-tied her hands together, and raped her. Singleton remembered Williams had a black, semi-automatic pistol with a brown grip, possibly a .45 caliber. According to Singleton, after Williams raped her, he suggested she work as a prostitute for him. He offered her protection, claiming he had other girls and a house she could stay in. He then abruptly left the motel room, leaving behind his .45 caliber pistol. Singleton, who was still tied up, used a lighter to burn the zip-ties off. Once free, she called a friend to come get her.

¶5. Singleton claimed she did not initially report the rape because of her former gang affiliation and work as a prostitute. She believed Williams found her through an advertisement on an escort website called Backpage. The two continued to communicate after January 26. Singleton asked Williams for money and accused him of stealing from her. Williams kept urging Singleton to work for him and demanded she return his pistol. When Singleton resumed working as a prostitute around the motel on February 4, Williams and an accomplice showed up. They fought with her boyfriend, then tried to get inside her room. She had not told anyone she had returned to the motel, so Singleton feared Williams was stalking her.

¶6. Officers arrested Williams on February 27, 2018. After he signed a ***Miranda*** waiver,[1] Detective Floyd conducted a video interview of Williams. During the interview, Williams gave a markedly different story than Singleton's. Williams claimed he first met Singleton

[1] *See* ***Miranda v. Arizona***, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

as a customer at the motel where he worked. He denied ever having consensual or non-consensual sex with her. But he admitted smoking marijuana with her and loaning Singleton a Colt. 45 pistol he "bought off the street." During the interview, Williams also admitted the Colt .45 pistol was "his pistol." Williams asked Detective Floyd if he would "catch another charge" for the gun—in addition to the alleged kidnaping and rape. Detective Floyd explained it was possible, but at that moment the kidnaping and rape were his main concern. Detective Floyd reduced the interview details to a typed written statement. Williams read the statement and was given the opportunity to make corrections. Williams then signed it. Williams admitted in the written statement that he loaned his Colt. 45 pistol to Singleton for protection.

¶7. On June 27, 2018, a grand jury indicted Williams for possessing a firearm as a felon. Based on Williams's prior separate burglary convictions, the indictment included a habitual offender enhancement.[2] Williams pled not guilty at his August 7, 2018 arraignment. He was held without bond. Nearly six months after his arrest, on August 13, 2018, Williams filed a pro se motion for a speedy trial. He filed his second pro se speedy trial motion on November 1, 2018. On February 14, 2019, Williams, through counsel, moved to suppress his written statement. Williams argued he signed the statement believing he and Detective Floyd had agreed that Williams would not be charged for possessing a firearm as a felon.

¶8. On May 1, 2019, Williams filed another pro se motion. This time he asked that the State's case be dismissed on speedy trial grounds. A week later, the trial court heard

[2] The grand jury did not charge Williams for the alleged kidnaping or rape.

Williams's motion to suppress. Detective Floyd testified there were no promises or deals about the potential gun charge. He maintained he and Williams's entire discussion occurred during the video-recorded interview.

¶9. The judge took the suppression issue under advisement. Despite Williams being present and testifying at the suppression hearing, neither he nor his counsel brought up the pro se speedy trial motions or the motion to dismiss. After the suppression hearing, Williams wrote several letters asking the trial court to hear his motion to dismiss. But he never brought it for a hearing nor did the trial judge rule on it.

¶10. On June 6, 2019, the trial judge denied the motion to suppress. He found Williams's claim of a purported deal between him and Detective Floyd was not credible. Two days before trial, on August 27, 2019, Williams's counsel filed a motion for discovery.

¶11. Trial began on August 29, 2019. After a two-day trial, the jury found Williams guilty of possessing a firearm as a convicted felon. Because Williams had two prior felony convictions, the trial judge sentenced him as a habitual offender to ten years in prison to run consecutive to all other earlier sentences.[3] Williams now appeals.

---

[3] Mississippi Code Section 99-19-81 states:

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Discussion

¶12. Williams's appointed appellate counsel filed a brief, specifically arguing Williams's conviction should be reversed on constitutional and statutory speedy trial grounds. And Williams filed his own supplemental pro se brief.[4] Between the two briefs, there are four claims: (1) the evidence was insufficient to prove possession, (2) the verdict was against the weight of the evidence, (3) the State elicited overly prejudicial evidence and testimony, and (4) Williams's constitutional and statutory speedy trial rights were violated. We discuss Williams's pro se claims first.

I. Sufficiency of the Evidence

¶13. Williams first challenges the sufficiency of the evidence supporting his felon-in-possession conviction. He insists the State failed to prove he actually or constructively possessed a firearm. Williams also asserts that because police officers did not find the Colt .45 pistol, his conviction cannot be sustained.

¶14. From the outset, this Court notes the fact that the charged firearm was not recovered by police does not itself render the remaining evidence insufficient. As the Court of Appeals has recognized, "[w]itness testimony may be sufficient to convict a defendant of possession

---

Miss. Code Ann. § 99-19-81 (Supp. 2019). Because Williams had at least two prior felony convictions—specifically for burglary—with sentences of more than one year, Section 99-19-81's sentence enhancement applied here. The maximum sentence for possessing a firearm as a convicted felon is ten years, which is the sentence the trial court imposed. *See* Miss. Code Ann. § 97-37-5 (Rev. 2014).

[4] On July 27, 2020, Williams moved to file a supplemental pro se brief. The State responded with a motion to strike. We grant Williams motion and accept his supplemental brief as filed. And we deny the State's motion to strike.

of a weapon by a felon. This is so even if no weapon is recovered." ***Williams v. State***, 269 So. 3d 192, 196 (Miss. Ct. App. 2018) (quoting ***Edwards v. State***, 966 So. 2d 837, 839 (Miss. Ct. App. 2007)). We reject Williams's claim about the lack of a recovered weapon. We instead examine the sufficiency of the State's evidence supporting the firearm possession charge.

¶15. When testing the sufficiency of evidence, this Court views the evidence in the light most favorable to the State. ***Martin v. State***, 214 So. 3d 217, 222 (Miss. 2017). We determine if any rational juror could have found the essential elements of the crime beyond a reasonable doubt. ***Id.*** The State receives the benefit of all favorable inferences reasonably drawn from the evidence. ***Hughes v. State***, 983 So. 2d 270, 276 (Miss. 2008).

¶16. The crime of felon in possession of a firearm contains two elements. Miss. Code Ann. § 97-37-5 (Rev. 2014). The State must prove: (1) the defendant possessed a firearm, and (2) the defendant had previously been convicted of a felony crime. *Id*. At trial, Williams stipulated he was a convicted felon. And on appeal, he only challenges the sufficiency of the State's proof that he possessed the firearm.

¶17. Evidence is either direct or circumstantial. And both types of evidence carry the same weight. ***Cardwell v. State***, 461 So. 2d 754, 760 (Miss. 1984). In many cases, the proof does not fall neatly into one of these evidentiary categories. But here it did. Every bit of the State's evidence of Williams's firearm possession was direct evidence. "[E]xamples of direct evidence include an admission or confession by the defendant to 'a significant element of the offense' or eyewitness testimony 'to the gravamen of the offense charged.'" ***Kirkwood***

v. State, 52 So. 3d 1184, 1187 (Miss. 2011) (quoting ***Mack v. State***, 481 So.2d 793, 795 (Miss. 1985)). Here, both forms of direct evidence are present.

¶18. Williams admitted in a recorded interview that during the dates charged he possessed the Colt .45 and lent it to Singleton. He explained the reason he came back to the motel on February 4 was to retrieve the pistol. He even signed a written statement admitting his actual ownership and possession of the gun. While Williams later recanted his written statement at trial, his change in story did not remove his initial admission from the realm of direct evidence. "[W]here a defendant's statement—recanted or not—is an admission or confession to a significant element of the crime charged, the statement remains as direct evidence." ***States v. State***, 88 So. 3d 749, 757 (Miss. 2012). So his recantation was factored in the weight of his testimony, amounting to a credibility issue for the jury to decide. *See* ***Little v. State***, 233 So. 3d 288, 292 (Miss. 2017).

¶19. Still, on top of Williams's many admissions to possessing the charged gun, Singleton gave eyewitness testimony that she saw Williams with the black and brown pistol—a gun she believed to be a .45. Williams pointed the pistol at her and, after sexually assaulting her, left the gun with her. In text messages from Williams to Singleton, Williams mentioned the pistol he loaned her. And he made repeated pleas to get it back. Williams also sent a text message to an associate asking him to help Williams steal his gun back.

¶20. While Williams brings up the nuances between the legal meanings of constructive and actual possession, there is no reason to delve into the distinctions. Such analysis is

unnecessary because all the State's evidence showed Williams *actually* possession the firearm. We find sufficient evidence supported the felon-in-possession-of-a-firearm charge.

II. Weight of the Evidence

¶21. Next, Williams points to perceived inconsistencies between Singleton's statements and testimony. He also suggests Singleton never saw him place a gun on the motel bed, that it simply appeared after the alleged rape. From this, Williams suggests the jury's verdict is against the overwhelming weight of the evidence. We disagree.

¶22. "When reviewing challenges to the weight of the evidence, this Court views the evidence 'in the light most favorable to the verdict.'" ***Williams v. State***, 285 So. 3d 156, 160 (Miss. 2019) (quoting ***Little***, 233 So. 3d at 292). "The jury is the sole judge of the weight and worth of evidence and witness credibility." ***Id.*** (citing ***Little***, 233 So. 3d at 292). And "[t]his Court does not reweigh evidence or determine a witness's credibility." ***Id.*** We "will only disturb a verdict 'when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.'" ***Id.*** (quoting ***Little***, 233 So. 3d at 292).

¶23. Williams completely overlooks the weight of his own recorded and signed statements. His admissions about possessing and owning the charged firearm, lending it to Singleton, and then returning to the motel to retrieve it undercut his attack on the verdict. Furthermore, Singleton testified in detail about the gun Williams pointed at her and left in her motel room. Any perceived differences in Singleton's testimony and statement were for the jury to

resolve—not this Court. Viewed in the light most favorable to the verdict, the weight of the evidence supports Williams's conviction.

III. Prejudicial Evidence

¶24. Williams's third argument amounts to a Rule 403 complaint. He insists the State introduced or elicited overly prejudicial evidence and testimony about the alleged kidnaping and rape at trial. *See* MRE 403 (permitting the trial court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice"). But the record shows Williams made no attempts to exclude this evidence. Williams filed no motions nor did he object to this evidence before or during trial. So he has forfeited his right to argue these issues on appeal. *See* ***Hall v. State***, 201 So. 3d 424, 428 (Miss. 2016) ("[F]ailure to object bars th[e] defendant from raising the issue on appeal."). Procedural bar aside, Williams cannot show plain error because there is no "manifest miscarriage of justice" or serious effect on "the fairness, integrity or public reputation of judicial proceedings." ***Brown v. State***, 995 So. 2d 698, 703 (Miss. 2008).

¶25. It is apparent the defense preferred the jury learn of these extraneous matters. Indeed, Williams's defense hinged on sullying Singleton's credibility. And evidence of her profession and a grand jury's rejection of her rape and kidnaping allegations focused prominently in this tactic. Even so, the defense, the State, and the trial court repeatedly emphasized Williams was not on trial for kidnaping or rape. And the judge gave a limiting instruction to that effect, which the jury is presumed to have followed. ***Evans v. State***, 226 So. 3d 1, 32 (Miss. 2017).

¶26. So even absent the forfeiture, there was no manifest miscarriage of justice.

IV. Constitutional and Statutory Rights to a Speedy Trial

¶27. Williams's appointed counsel asserts the State violated Williams's constitutional and statutory rights to a speedy trial. Citing these grounds, his attorney specifically requests we reverse his conviction. This Court analyzes a defendant's constitutional right to a speedy trial separately from his statutory right. ***Simmons v. State***, 678 So. 2d 683, 686 (Miss. 1996)). Thus, we discuss each in turn.

A. Williams's Constitutional Right to a Speedy Trial

¶28. The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to a speedy trial. ***Barker v. Wingo***, 407 U.S. 514, 515, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). We apply the four-factor balancing test from ***Barker*** to decide if the constitutional right to a speedy trial has been violated. ***Id.*** at 530. The ***Barker*** factors include (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) prejudice to the defendant. ***Id.***

1. Length of Delay

¶29. The constitutional right to a speedy trial "attaches 'at the time of a formal indictment or information or else the actual restraints imposed by arrest and holding to a criminal charge.'" ***Johnson v. State***, 235 So. 3d 1404, 1417 (Miss. 2017) (quoting ***Rowsey v. State***, 188 So. 3d 486, 495 (Miss. 2015)). "A delay of eight months or more triggers a presumption of prejudice that requires a full analysis under ***Barker***." ***Franklin v. State***, 136 So. 3d 1021, 1033 (Miss. 2014) (citing ***Johnson v. State***, 68 So. 3d 1239, 1242 (Miss. 2011)). Officers

arrested Williams on February 27, 2018. He was indicted on June 27, 2018, and remained detained until his trial began on August 29, 2019. The subject firearm charge prompted a petition to revoke the probationary period of one of his prior burglary convictions. The record also shows that around this same time, Williams was indicted for a separate statutory rape.

¶30. The delay here does exceed eight months, which makes it presumptively prejudicial. But a presumptively prejudicial delay does not mean the defendant suffered *actual* prejudice. ***Id.*** (citing ***Johnson***, 68 So. 3d at 1242). Rather, this delay "acts as a triggering mechanism for further inquiry into the ***Barker*** analysis, and shifts the burden to the State to show the reason for delay." ***Johnson***, 68 So. 3d at 1242 (citing ***Doggett v. United States***, 505 U.S. 647, 652, 112 S. Ct. 2689, 120 L. Ed. 2d 520 (1992)). We therefore address the remaining factors.

2. Reasons for Delay

¶31. Under the second ***Barker*** factor, "[d]ifferent reasons for delay are assigned different weights." ***Bateman v. State***, 125 So. 3d 616, 629 (Miss. 2013). Deliberate attempts to delay the trial to hamper the defense are weighted heavily against the government. ***Barker***, 407 U.S. at 531. More neutral reasons for the delay, such as negligence or overcrowded courts, are weighted against the government, albeit less heavily. ***Id.*** Delays attributable to the defense are excusable. ***Smith v. State***, 489 So. 2d 1389, 1391 (Miss. 1986) (explaining that such a delay is understandable where the defendant has "deliberately done something to cause the delay"). Here, many of the typical filings considered under this prong of a ***Barker***

analysis—motions from either party seeking continuances, orders denying a dismissal motion for a speedy trial violation, and notices or orders setting trial dates—are absent.

¶32. Williams was arrested on February 27, 2018, and was indicted June 27, 2018. "When a defendant is indicted by the first available grand jury in the county, the time between arrest and indictment is not counted against either the state or the defense." ***Courtney v. State***, 275 So. 3d 1032, 1042 (Miss. 2019) (citing ***Brengettcy v. State***, 794 So. 2d 987 993 (Miss. 2001)). In ***Courtney***—like this case—the record was silent about whether the first available grand jury indicted the defendant. ***Id.*** And neither the State nor the defense suggested or argued otherwise. ***Id.*** So the delay was not held against the State. ***Id.*** The situation here is similar. The record does not mention whether the first available grand jury indicted Williams. And like the defendant in ***Courtney***, Williams does not suggest or argue to the contrary. Thus, just as in ***Courtney***, this four-month delay should not count against the State.

¶33. The State next points to Williams's motion to suppress. Williams's counsel filed the motion on February 14, 2019. The judge heard the motion on May 8, 2019, and denied it June 6, 2019. The lapse in time "while a motion to suppress is being considered by the trial court [is] not counted against the State." ***Brewer v. State***, 725 So. 2d 106, 119 (Miss. 1998) (citing ***Ford v. State***, 589 So. 2d 1261, 1262-63 (Miss. 1991)). More specifically, "[t]he time between the *presentation* of the motion to suppress and the judge's ruling" is not counted against the State. ***Id.*** (emphasis added). Here, that delay was about a month.

¶34. In addition, the State points out Williams never brought his pro se motion to dismiss for a hearing. Even while participating in the courtroom on his motion to suppress, neither

Williams nor his counsel pursued his speedy trial motions or motion to dismiss. This tends to cut against Williams's speedy trial assertion.

¶35. Ultimately, outside the eight-month period—after which we presume prejudice—there is approximately an unaccounted five-month delay. But Williams does not argue nor does the record show anything more than neglect by the State or trial court. So while this delay weighs against the State, it is not weighted as heavily as an intentional delay. ***Perry v. State***, 637 So. 2d 871, 875 (Miss. 1994).

3. Right to Speedy Trial Asserted

¶36. The State points out Williams failed to assert his speedy trial right between his arrest and indictment. The State insists the nearly six-month lapse between his arrest and pro se motion for a speedy trial is "critical to the analysis of a speedy trial issue." ***Young v. State***, 891 So. 2d 813, 818 (Miss. 2005) (citing ***State v. Woodall***, 801 So. 2d 678, 684 (Miss. 2001)). In other words, the State believes Williams's tardy assertion of his speedy trial right should weigh against him. The Fifth Circuit has noted "the point at which the defendant asserts his right is important because it may reflect the seriousness of the personal prejudice he is experiencing." ***United States v. Palmer***, 537 F.2d 1287, 1288 (5th Cir. 1976) (citing ***Barker***, 407 U.S. at 531). To this extent, the particular promptness is important because it perhaps suggests that any hardships Williams suffered between arrest and indictment were either minimal or caused by other factors. Even so, while "delay in raising a speedy trial claim may cost a defendant points in the ***Barker*** analysis, there is no procedural bar." ***Brengettcy***, 794 So. 2d at 994. But this Court has been clear that this factor weighs against

defendants who wait a significant amount of time after arrest to demand a speedy trial. ***Courtney***, 275 So. 3d at 1043 (citing ***Bateman***, 125 So. 3d at 630). Though his assertion was significantly delayed—which weighs against him in the ***Barker*** analysis—the State acknowledges Williams did eventually assert his right.

4. Actual Prejudice

¶37. The final ***Barker*** analysis prong requires we examine what, if any, prejudice Williams suffered. Prejudice is assessed in light of these interests: "(I) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." ***Barker***, 407 U.S. at 532. Of these, the most serious is the last. Because "the defendant is clearly in the best position to show prejudice under the 'prejudice' prong, the burden remains with him . . . ." ***Johnson***, 68 So. 3d at 1245. And here, Williams does not show any prejudice to himself or his defense. Thus, the State's delay did not violate his right to a speedy trial.

¶38. While Williams's pretrial incarceration was lengthy, that alone is insufficient to show prejudice. ***Id.*** Williams's only argument against his continued incarceration was that he was "missing out" on time with his child. Williams does not show he suffered anxiety or concern from the delay. *See* ***id.*** But most important, he has failed to show any prejudice or impairment to his defense. The case turned simply on Singleton's and Williams's credibility. This Court may find prejudice when evidence is lost, witnesses die, or the investigation turns stale. But none of these issues occurred. Because Williams has not shown any actual prejudice, the State's delay did not violate his right to a speedy trial.

B. Statutory Speedy Trial Right

¶39. Under Mississippi Code Section 99-17-1, absent good cause and a continuance, the State shall try a defendant for every indicted offense within 270 days. Miss. Code Ann. § 99-17-1 (Rev. 2015). The State admits it exceeded the 270 day mark. Thus, the State violated the statute. But just as compliance with the statute does not necessarily mean the defendant received a speedy trial, *see* ***Sharp v. State***, 786 So. 2d 372, 377 (Miss. 2001), non-compliance does not itself evince a violation of the defendant's rights. ***McBride v. State***, 61 So. 3d 138, 147 (Miss. 2011). Indeed, a defendant must show the State not only violated the statute, but the violation resulted in actual prejudice to his or her defense. ***Id.*** (citing ***Guice v. State***, 952 So. 2d 129, 139-40 (Miss. 2007)). And as discussed, Williams has not shown the delay prejudiced his defense. Thus, his statutory speedy trial right was not violated.

Conclusion

¶40. The evidence was sufficient to show Williams possessed a firearm as a convicted felon. And the verdict was supported by the weight of the evidence. Furthermore, because Williams has failed to show any actual prejudice to his defense, his constitutional and statutory rights to a speedy trial were not violated.

¶41. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.