Circuit Court for Baltimore County
Case No. 03-K-14-6298

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 123

September Term, 2016

LATRAY TAVON HUGHES

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 19, 2018

Following a nine-day jury trial in the Circuit Court for Baltimore County, appellant Latray Tavon Hughes was convicted of first-degree murder, first-degree burglary, conspiracy to commit first-degree burglary, and use of a firearm in the commission of a crime of violence. The court sentenced appellant to life in prison for first-degree murder, and three concurrent terms of twenty years for each of the remaining three counts. Appellant timely appealed and presents six questions for our review:

1. Is the life sentence for first-degree murder unconstitutional?
2. Was [a]ppellant deprived of his right to trial within 180 days?
3. Did the court below err in denying the motion to suppress [a]ppellant's statement to police?
4. Did the trial court err by admitting call detail records and testimony without adequate authentication?
5. Did the trial court abuse discretion by allowing the prosecution to elicit hearsay statements during the testimony of Chadon Bradshaw?
6. Is the evidence insufficient to sustain [a]ppellant's convictions?

For the following reasons, we affirm.[1]

BACKGROUND

In early October 2014, Chadon Bradshaw ("Bradshaw"), who lived in Baltimore at the time, received an offer from a friend in Atlanta, Georgia, to learn how to perform credit

[1] This Court heard oral argument on November 9, 2017. On November 17, 2017, this Court *sua sponte* stayed the appeal pending the Court of Appeals's resolution of the constitutionality of a juvenile's life sentence. Following the Court of Appeals's filing of its opinion in *Carter v. State*, 461 Md. 295 (2018), this Court *sua sponte* lifted the stay in this case on November 15, 2018.

card fraud. Bradshaw and her niece's mother accepted the offer. In Atlanta, Bradshaw's friend put Bradshaw's name on PayPal cards associated with stolen credit card numbers. Due to disagreements with her friend, however, Bradshaw and her niece's mother left before learning the entire process. On their drive back to Baltimore, Bradshaw stopped in North Carolina and purchased approximately $5,000 worth of clothes and shoes with the PayPal cards her friend had given her while in Atlanta. When she arrived in Baltimore, Bradshaw placed the clothing and shoes in trash bags and stored them at her mother's house at 4555 Reisterstown Road, where Bradshaw, her children, two brothers, and three sisters lived.

One of Bradshaw's brothers, Irvin Tuck ("Tuck"), fathered a child, S.T., with a woman named Yanick Forde ("Forde"). In July 2014, Forde began living at 4555 Reisterstown Road with her two sons: T.E. and S.T. In mid-October 2014, Forde and Bradshaw became involved in a dispute after Forde suspected that Bradshaw had used Forde's identity in order to purchase the clothes and shoes during Bradshaw's trip back from Atlanta. On October 19, 2014, Forde saw pictures of her identification, social security card, credit cards, and other papers on Bradshaw's phone. Rather than confront Bradshaw about the pictures she had seen, Forde assumed that Bradshaw had used her identity to steal the clothes during Bradshaw's trip to Atlanta, and decided to steal the already stolen clothes. On October 22, Forde and two of her friends, Tanisha and Crystal, went to 4555

Reisterstown Road and loaded up a "hack cab[2]" with Bradshaw's trash bags filled with the clothes. In addition to taking Bradshaw's stolen clothes, Forde packed up most of her personal belongings to take with her. Forde forgot to take her school bag, however, which contained her wallet and some other personal possessions, including a piece of mail addressed to Forde at her mother's residence at 7851 St. Claire Lane in Dundalk, Maryland. While unloading her possessions and the stolen clothes at Tanisha's house, the hack cab driver became suspicious of the situation and drove away with approximately fifteen percent of the stolen clothes before Forde could unload them.

The next day, Forde was walking with Tanisha to Crystal's house when Bradshaw began to chase after them in a truck. Forde and Tanisha hid from Bradshaw, and called Crystal to ask for help. Crystal informed Forde and Tanisha, however, that Bradshaw had been arrested. Apparently, the vehicle Bradshaw had used to chase Forde and Tanisha was the rental vehicle Bradshaw had used for her trip to Atlanta, but Bradshaw was not on the rental agreement.

Forde initially refused to return the stolen clothes, believing that they had been purchased with her identity. A week later, on October 29, however, Forde agreed to return the clothes to Bradshaw. An exchange was supposed to occur that day at Crystal's house in which Forde would return the clothes in exchange for her wallet. At approximately 2:00

[2] Forde described a "hack cab" as a stranger whom you ask to give you a ride, as opposed to a commercial Yellow Cab.

(continued)

p.m., James Murphy ("Murphy") and Tuck went to retrieve Bradshaw's items. At the exchange, however, Bradshaw only received approximately fifty percent of the stolen clothes—apparently Forde, Tanisha and Crystal had sold some of the items.[3]

Later that same day, when Bradshaw learned that most of her clothes were still missing, she became angry and decided to go to 7851 St. Claire to attempt to recover whatever she could. Bradshaw felt so strongly that the clothes belonged to her that she anticipated and was willing to fight Forde in order to recover the clothes. That night, Bradshaw and Murphy left together for Forde's mother's house. On the way, they picked up appellant and Delonte Epps ("Epps") separately, telling both that they were going to 7851 St. Claire in Dundalk to "go get the clothes back."

At approximately 10:00 p.m., Bradshaw, Murphy, Epps, and appellant arrived at what they believed was the correct address.[4] All four exited Bradshaw's SUV and attempted to verify the correct address before knocking on the front door. They proceeded to knock on the front door, and when no one answered, the four went around to the back of the house. The back door, however, was locked, so Epps went through a window and unlocked the back door for the others.

The four walked around the downstairs living room area, and eventually all four went up the stairs. Bradshaw looked at the pictures hanging in the house, but did not

[3] According to Bradshaw, Forde only returned approximately $300 worth of the stolen clothing.

[4] Bradshaw relied on the piece of mail found in Forde's bag to determine that 7851 St. Claire Lane was the right address.

recognize Forde, causing her to wonder whether they were in the right place. Appellant and Murphy went up the stairs with Bradshaw, but Epps remained only halfway up the steps. Bradshaw entered a baby's bedroom and began to doubt that they were in the correct house. As she walked out of the baby's bedroom, Bradshaw heard appellant talking to a man later identified as Barquese Warren ("Warren"), Forde's brother. Appellant asked Warren about the clothes, and Warren responded that he "didn't know anything about any clothes." Appellant then asked Warren about some marijuana and money, and Warren replied that he had money in the next bedroom. Bradshaw saw appellant pointing a gun at Warren. At that point, Bradshaw told Murphy that they should leave because they were in the wrong house. Murphy replied that Bradshaw should go outside because appellant was about to kill the man he was speaking to. Bradshaw left the house through the front door and entered her vehicle. After starting the vehicle, Bradshaw waited a few seconds and then heard five or six gunshots. Bradshaw pulled up to the front of the house without turning on her headlights and waited for the others to emerge, but soon drove off. At the top of the street, Bradshaw accidentally struck Murphy with her car, and then Murphy and Epps, followed by appellant, entered Bradshaw's vehicle.

Once inside the vehicle, appellant passed the gun to Epps, and Epps instructed Bradshaw to take him home so that he could "drop the gun off" as well as some clothing he had apparently taken from Warren's home. Bradshaw did as instructed and drove the group to Epps's house. Epps went inside his home with the gun and returned empty-handed to Bradshaw's vehicle three minutes later. The men told Bradshaw that she "couldn't go

home" and then Epps and appellant called their respective girlfriends and Bradshaw picked them up. The six of them: Bradshaw, appellant, Epps, Murphy, appellant's girlfriend and Epps's girlfriend all ate at a Denny's restaurant for approximately an hour or two, and then Bradshaw dropped them off and returned to her home.

Tracy Warren ("Tracy"), Forde and Warren's mother, was home at the time of the shooting. After hearing the shots, she went downstairs to see that the back door was open. After calling out for Warren, Tracy went back up the stairs and heard Warren call out "Ma." Tracy went into the bedroom to find Warren bleeding, and called 911. By the time emergency medical personnel arrived, Warren had died.

On February 3, 2015, Bradshaw was charged with first-degree murder and several related charges in Warren's death. Bradshaw pleaded guilty to first-degree burglary and second-degree murder and agreed to testify against appellant, Murphy, and Epps. Following a consolidated nine-day jury trial, the jury convicted appellant of first-degree murder, first-degree burglary, conspiracy to commit first-degree burglary, and use of a firearm in the commission of a crime of violence. We shall provide additional facts as necessary.

DISCUSSION

I. Constitutionality of Appellant's Life Sentence

Appellant, who was sixteen years old at the time of the crime, first challenges the constitutionality of his sentence. He argues: 1) that his life sentence is the functional equivalent of life without parole because "Maryland's parole system for prisoners serving

life sentences does not provide a meaningful opportunity for release as constitutionally required for youths"; 2) that the sentencing court did not consider youth and its attendant circumstances as a mitigating factor as required by Supreme Court precedent; and 3) that the court erred by ruling that appellant was not entitled to have a jury determine his sentence. In order to address these claims, it is helpful to first review the Supreme Court cases that form the basis for appellant's contentions.

In *Graham v. Florida*, the Supreme Court held it unconstitutional for a state to sentence a juvenile nonhomicide offender to life without the possibility of parole, because such a sentence deprives the juvenile of a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. 48, 75 (2010). Although *Graham* only addressed juvenile nonhomicide offenders, the Supreme Court held two years later in *Miller v. Alabama* that "*Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses." 567 U.S. 460, 473 (2012). The *Miller* Court clarified that its holding would not foreclose a sentencing court's authority to sentence a juvenile homicide offender to life imprisonment without the possibility of parole, but emphasized that the sentencing court must first "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. Against this backdrop, we now turn to appellant's contentions.

A. Appellant's Life Sentence is Not the Functional Equivalent of Life Without Parole

Although appellant received a life sentence (with parole eligibility), he contends that Maryland's parole system "does not provide a meaningful opportunity for release" as required by *Graham*, and that his sentence is therefore the functional equivalent of life without the possibility of parole. Such a sentence, he argues, is unconstitutional unless the sentencing court makes specific considerations pursuant to *Miller*.

The Court of Appeals recently addressed this precise issue in *Carter v. State*, 461 Md. 295 (2018), *reconsideration denied*, (Oct. 4, 2018). There, two juvenile offenders, Carter and Bowie, who received life sentences with parole eligibility, argued that their sentences were the equivalent of life without the possibility of parole. *Id.* at 326-30. Like appellant, Carter and Bowie based their arguments on the notion that Maryland's parole system does not provide juvenile offenders serving life sentences with a meaningful opportunity to obtain release as required by *Graham*. *Id.* at 306-07. In rejecting their arguments, the Court held that "[t]he Maryland law governing parole . . . provides a juvenile offender serving a life sentence with a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.* at 365. Therefore, for the reasons set forth by the Court of Appeals in *Carter*, appellant's sentence is not the equivalent of life without the possibility of parole.

B. Obligation of the Sentencing Court and Jury Determination

Because the Court of Appeals upheld the constitutionality of Maryland's parole system as applied to juvenile offenders serving life sentences, we turn to appellant's two

remaining contentions regarding sentencing. First, we reject appellant's claim that the sentencing court erred by failing to consider his youth and its attendant circumstances as mitigating factors. As stated above, *Miller* provides that a sentencing court must take into account youth and its attendant circumstances before sentencing a juvenile homicide offender to life without parole. 567 U.S. at 480. Because appellant did not receive a sentence of life without parole, and because the Court of Appeals held that Maryland's parole system does not render life sentences to be *de facto* life without parole, these considerations were not required at sentencing.

Finally, we reject the notion that appellant was entitled to have a jury determine his sentence. Appellant claims that he improperly received an enhanced sentence of life without parole, and that Supreme Court precedent requires a jury to make certain findings of fact beyond a reasonable doubt to substantiate sentence enhancement. Because appellant did not receive an enhanced sentence of life without parole, his argument lacks merit.

II. *Hicks* Rule

Appellant next argues that his case was not brought to trial in time to satisfy the rule interpreted by the Court of Appeals in *State v. Hicks*, 285 Md. 310 (1979).[5] This rule is codified in Md. Code (2001, 2018 Repl. Vol.), § 6-103 of the Criminal Procedure Article ("CP") and Maryland Rule 4–271(a). It requires the State to bring a criminal defendant to trial within 180 days of either the appearance of defendant's counsel or the appearance of

[5] Appellant does not contend that his constitutional right to a speedy trial was violated.

the defendant before the circuit court, whichever occurs first. *Dorsey v. State*, 349 Md. 688, 702 (1998).

When the State exceeds this 180-day deadline (commonly referred to as defendant's *Hicks* date) and unjustifiably delays a defendant's trial beyond the 180-day period, the appropriate sanction is dismissal. *State v. Huntley*, 411 Md. 288, 302 (2009). There are, however, cases in which a criminal defendant's trial may be postponed beyond the *Hicks* date. In order to hold a trial after a defendant's *Hicks* date, the county administrative judge or a designee must find good cause for the postponement. CP § 6-103(b)(1). This finding must be made prior to the passage of defendant's *Hicks* date, and cannot be made retroactively once the *Hicks* date has passed. *Choate v. State*, 214 Md. App. 118, 142-43 (2013).

Here, appellant contends that: (1) the administrative judge's finding of good cause was untimely, (2) the administrative judge erred by finding good cause, and (3) the trial judge erred by denying appellant's pre-trial motion to dismiss based on the alleged *Hicks* rule violation. To evaluate these claims, we begin by examining the sequence of events related to the alleged *Hicks* violations.

A. Procedural Background

On November 19, 2014, the State filed an indictment against appellant in the circuit court. On December 2, 2014, defense attorneys from the Public Defender's Office entered their appearances on behalf of appellant.

On January 29, 2015, the court granted the State's motion for a joint trial, allowing the State to try appellant, Murphy, and Epps together. The three were arraigned before the circuit court on February 11, 2015. At the arraignment, only appellant had counsel. On February 25, 2015, appellant filed a motion to set aside the joinder.

On April 7, 2015, the trial judge held a scheduling conference for the three defendants. At the scheduling conference, Murphy and Epps were still without representation. Because appellant's counsel had entered an appearance before the three defendants were arraigned, his *Hicks* date was earlier than Murphy and Epps's, which prompted disagreement about the correct calculation of appellant's *Hicks* date. Three potential dates were mentioned: May 18, 2015; May 25, 2015; and June 1, 2015. Appellant argued that his *Hicks* date should be May 18, 2015, based on the fact that the Public Defender's Office filed a motion to transcribe grand jury testimony in the District Court on November 18, 2014.[6] Appellant argued in the alternative that if not May 18, 2015, his *Hicks* date should be May 25, 2015, because the certificate of service on appellant's trial counsel's notice of appearance was dated November 25, 2014.[7] The State argued for a

[6] Because 180 days from November 18, 2014, was Sunday, May 17, 2015, the applicable date was May 18, 2015. Md. Rule 1-203(b).

[7] Because 180 days from November 25, 2014, was Sunday, May 24, 2015, the applicable date was May 25, 2015. Md. Rule 1-203(b).

(continued)

Hicks date of June 1, 2015, based on the entry of appellant's counsel's appearance on December 2, 2014.[8]

Noting that there was no *Hicks* issue for Murphy and Epps, the trial judge set trial for Murphy and Epps for July 23 through July 31, 2015, and also scheduled motions hearings for June 1 and June 2, 2015. At the close of the scheduling conference, appellant's *Hicks* issue and motion to set aside joinder were still outstanding.

Later in the afternoon on April 7, 2015, in an attempt to resolve the *Hicks* issue, appellant and the State appeared before the county administrative judge. The administrative judge, however, informed the parties that she could not rule on a motion to postpone appellant's trial date, because appellant did not yet have a trial date.

That same afternoon, the administrative judge sent the parties back to the trial judge, who heard argument on the *Hicks* issue and appellant's motion to set aside joinder. While appellant conceded that there were no evidentiary reasons why the three defendants could not be tried together, he nevertheless argued that his trial should be severed because of the State's failure to properly serve him with the motion for joinder, and also because of the requirement that he be tried prior to his *Hicks* date. The court denied appellant's motion to set aside the joinder, concluding that it was in the interest of judicial economy to try appellant, Murphy, and Epps together. As a result, appellant's trial was set for July 23, 2015 through July 31, 2015 along with Murphy and Epps. The trial judge also agreed with

[8] Because 180 days from December 2, 2014, was Sunday, May 31, 2015, the applicable date was June 1, 2015. Md. Rule 1-203(b).

the State's observation that, assuming a June 1, 2015 *Hicks* date for appellant, the State would still be within *Hicks* when the parties came back for the motions hearing on June 1, 2015.

On June 1, 2015, appellant, Murphy, and Epps appeared before the administrative judge for a postponement hearing. Murphy and Epps had only recently obtained counsel, and both waived their *Hicks* dates and requested a postponement of the joint trial. Appellant opposed his co-defendants' postponement request, arguing that his *Hicks* date had already passed and that he was ready for trial that day. The administrative judge opined that it was in the overall interest of justice to try the three defendants together, and found that "Good cause is shown. [Appellant's trial] needs to be postponed because administratively it cannot be reached right now."

On June 3, 2015, appellant filed a motion to dismiss, asserting a *Hicks* violation. The trial judge denied appellant's motion to dismiss on August 17, 2015, stating that the administrative judge properly found good cause on June 1, 2015, to postpone the trial. The following day, appellant asked the trial judge to reconsider her ruling, which she declined to do. Appellant, Murphy, and Epps were subsequently tried together before a jury from November 19, 2015, to December 4, 2015.

B. The Administrative Judge's Finding of Good Cause was Timely

As stated above, appellant raises three allegations of error. In order to determine whether the administrative judge's good cause finding was timely, we must first determine whether the correct *Hicks* date in appellant's case was May 18, 2015, or June 1, 2015.[9]

Pursuant to CP § 4-271(a), the State must bring a criminal defendant to trial within 180 days of either the appearance of defendant's counsel or the appearance of the defendant before the circuit court, whichever happens first. Appellant contends that the Public Defender's Office effectively entered its appearance on November 18, 2014, when a district public defender filed a motion to transcribe grand jury testimony. That motion was docketed in the District Court on November 21, 2014. While we acknowledge that under Maryland Rule 4-214(a), defense counsel may enter an appearance by filing a pleading or motion, we note that "only proceedings in the *circuit court*—not the district court—trigger the 180-day clock." *White v. State*, 223 Md. App. 353, 374 (2015).

Because appellant's November 18, 2014 motion was never docketed in the circuit court, the court correctly measured appellant's *Hicks* date from December 2, 2014, when appellant's attorneys entered their appearance in the circuit court. As stated above, this resulted in a *Hicks* date of June 1, 2015. The administrative judge's finding of good cause in appellant's case was made on June 1, 2015. While a county administrative judge may not make a timely finding of good cause after the *Hicks* deadline has passed, *Calhoun v.*

[9] Appellant does not argue, as he did before the circuit court, for an alternative *Hicks* date of May 25, 2015.

State, 299 Md. 1, 8 (1984), the administrative judge may find good cause before the passage of the *Hicks* deadline. *Choate*, 214 Md. App. at 142-43. Accordingly, the "good cause" determination was timely. *See Morris v. State*, 153 Md. App. 480, 531 (2003) (noting that 180th day for purposes of *Hicks* calculations was "a day just inside the wire rather than just outside it").

C. The Administrative Judge Did Not Err in Finding Good Cause

Next, we address appellant's contention that the county administrative judge erred in finding good cause to postpone his trial beyond the *Hicks* date, June 1, 2015, and that there was good cause for the five-and-a-half-month delay between June 1, 2015 and commencement of trial on November 19, 2015.

In finding good cause to postpone appellant's trial, the administrative judge stated:

> The bottom line to me is whether good cause is shown to postpone these matters. The basic reason to postpone it is so that all of them get tried together. You say you're prepared to go today. I'm postponing cases today because they can't get reached. I've got two juries that are picking right now, a med mal that's starting, and we don't have enough judges for the docket tomorrow. We have one judge for three dockets tomorrow as of right now, and another case that's elected. It can't get started too.
>
> Good cause is shown. It needs to be postponed because administratively it cannot be reached right now. In looking at whether to reset your client separate and apart from the rest, [the trial judge] had already ruled that there is no basis to sever.
>
> I find that it is in the overall interest of justice that the matters be tried together in terms of time and availability, court time, calendar time, to say nothing of the inconvenience to witnesses and others. So, over your strenuous objection -- and I will note it as strenuous -- I find good cause is shown to postpone all matters.

When reviewing a challenge to an administrative judge's finding of good cause, we note that "[t]he determination as to what constitutes a good cause, warranting an extension

of the trial date beyond the [180-day] limit, is a discretionary one, which . . . carries a presumption of validity." *Thompson v. State*, 229 Md. App. 385, 398 (2016) (quoting *State v. Barber*, 119 Md. App. 654, 659 (1998)). "Notably, the appellant has the burden to demonstrate 'either a clear abuse of discretion or a lack of good cause as a matter of law.'" *Id.* (quoting *Moody v. State*, 209 Md. App. 366, 374 (2013)).

The good cause requirement for a postponement beyond a defendant's *Hicks* date has two components: "1. there must be good cause for not commencing the trial on the assigned trial date; 2. there must be good cause for the extent of the delay." *State v. Frazier*, 298 Md. 422, 448 (1984). Regarding the first component, we have held that "[n]on-chronic court congestion can constitute good cause for postponing a trial beyond the 180-day period." *Reed v. State*, 78 Md. App. 522, 534 (1989). Furthermore, the Court of Appeals has held that an administrative judge may postpone a defendant's trial in order to avoid the inconvenience of trying the defendant separately from his co-defendants. *Satchell v. State*, 299 Md. 42, 46 (1984). In *Satchell*, Satchell and three co-defendants were charged with burglary and related offenses. *Id.* at 43-44. One of Satchell's co-defendants requested a postponement in order to obtain counsel, and although the other two co-defendants agreed to the postponement, Satchell refused. *Id.* at 44. The administrative judge found good cause for the postponement, opining that it would be "inconvenient to try it separately." *Id.* On appeal, the Court of Appeals held that the administrative judge did not abuse his discretion in concluding there was good cause to postpone the case. *Id.* at 46.

Here, appellant was tried with Murphy and Epps, both of whom requested postponements because their attorneys entered their appearances later and required additional time to prepare. Appellant's counsel candidly informed the court that there was no reason that the three defendants could not be tried together—other than the potential violation of appellant's *Hicks* date.[10] Consistent with *Satchell*, we hold that the administrative judge here did not abuse her discretion in finding good cause to try appellant beyond his *Hicks* date.

Regarding the second component of a good cause finding, which involves the extent of the delay, we are unpersuaded by appellant's unsupported assertion that a five-and-a-half month delay between the administrative judge's good cause finding and appellant's new trial date was unreasonable. "The critical order by the administrative judge, for purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days." *Frazier*, 298 Md. at 428. In *Frazier*, the Court of Appeals reviewed four cases in which the defendants complained of unreasonable delays past their *Hicks* dates. *Id.* at 455. The delays ranged in time from under three months to nearly four months. *Id.* at 455 n.25. The Court held that delays of this magnitude did not constitute an

[10] To the extent that appellant argues on appeal that he was prejudiced by the delay, we note that prejudice to appellant is not a factor under the *Hicks* rule. *See Dalton v. State*, 87 Md. App. 673, 682 (1991) ("Benefits inuring to defendants from the rule are 'incidental.'"). "The fundamental goal served by the statutory right is furthering the public interest in avoiding harm resulting from unjustifiable delays and excessive postponements in criminal trials." *Id.* at 681.

"inordinate length of time" and did not shift the burden to the State to show justification. *Id.* at 462.

It is the defendant's burden to show, in view of all the circumstances, that a post-postponement delay is inordinate. *Rosenbach v. State*, 314 Md. 473, 479 (1989). Here, appellant offers little more than a conclusory assertion that the delay was unreasonable. As stated above, Epps and Murphy did not obtain representation until shortly before the hearing on June 1, 2015, and their attorneys required additional time to prepare for a lengthy trial. Based on the circumstances here, we hold that there was good cause for the five-and-a-half-month delay between the administrative judge's postponement and appellant's trial.

D. The Trial Judge Did Not Err in Denying Appellant's Motion to Dismiss

Lastly, we address appellant's contention that the trial judge erred when she denied his motion to dismiss pursuant to *Hicks* on August 17, 2015, and also when she declined to reconsider the motion on August 18, 2015.

When, pursuant to a defendant's motion to dismiss, a trial judge reviews a good cause finding by the county administrative judge, "the trial judge (as well as an appellate court) shall not find an absence of good cause unless the defendant meets the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law." *Frazier*, 298 Md. at 454. As stated above, appellant failed to meet his burden of showing either an abuse of discretion or a lack of good cause. Accordingly, we hold that the trial court did not err in denying the motion to dismiss.

III. Suppression Issues

On November 13, 2014, at 5:05 p.m., police stopped a car being driven by Bradshaw, took appellant and Bradshaw into custody, and transported them to Baltimore County Police Headquarters for interviews. Detective Craig Schrott, the lead detective in the investigation of Warren's murder, interviewed multiple people that night,[11] including both Bradshaw and appellant. Based primarily on his interview of Bradshaw, Detective Schrott placed appellant under arrest at around midnight.

On August 17 and 18, 2015, the circuit court held a hearing on multiple suppression motions, including appellant's motion to suppress statements that he made while in police custody. The circuit court denied this motion. On appeal, appellant argues that the circuit court erred in denying his motion because: (1) his waiver of rights under *Miranda*[12] was not valid, (2) his post-*Miranda* statements were not voluntary, (3) the police obtained his phone number in violation of *Miranda*, and (4) a cell phone call that appellant placed while he was in the interview room was recorded in violation of Maryland's wiretap statute.

In reviewing the circuit court's decision to deny a suppression motion, we ordinarily limit our review to the record of the motions hearing. *Sinclair v. State*, 444 Md. 16, 27 (2015). We view the evidence in the light most favorable to the prevailing party, and accept the circuit court's findings of fact unless they are clearly erroneous. *Id.* "The ultimate determination of whether there was a constitutional violation, however, is an independent

[11] Murphy, Epps, and Tuck were also brought in and interviewed on the same date.

[12] *Miranda v. Arizona*, 384 U.S. 436 (1966).

determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Id.* (quoting *Belote v. State*, 411 Md. 104, 120 (2009)).

A. Appellant's *Miranda* Waiver was Valid

Appellant contends that his waiver of *Miranda* rights was invalid because Detective Schrott did not make adequate efforts to ensure that appellant, who was then sixteen years old, understood his *Miranda* rights. Appellant argues that because he was "16 years of age at the time of the interview and he asked for his grandmother[,]" Detective Schrott should have made an effort to allow appellant to consult with an adult prior to waiver.

We begin our evaluation of appellant's arguments by reciting the well-established requirements for a valid *Miranda* waiver:

> Defendants may waive their *Miranda* rights, provided, under the totality of the circumstances, they act voluntarily, knowingly, and intelligently. The court must consider defendant's age, intelligence, education, experience, and mental capacity, as well as the length of interrogation, the tactics of interrogation, and whether law enforcement threatened or induced the suspect to confess. *We apply the same totality of the circumstances test to juvenile waivers. Tender age and inexperience, however, require law enforcement to take great care that juvenile statements are voluntary.* The State must prove valid waiver by a preponderance of the evidence.

Holmes v. State, 116 Md. App. 546, 553 (1997) (emphasis added) (citations omitted).

Under the totality of the circumstances test, we note that the absence of a parent or guardian does not, in itself, render a juvenile *Miranda* waiver invalid. *McIntyre v. State*, 309 Md. 607, 621-22 (1987). In *McIntyre*, police officers arrested fifteen-year-old McIntyre on his way to school, told him that he was being arrested for rape, and informed him of his *Miranda* rights. *Id.* at 609. McIntyre said that he understood his rights and

asked the officers when he could see his mother, but was told that he could not see her because he had been charged as an adult. *Id.* At the station, police again fully advised McIntyre of his *Miranda* rights, and he again told them that he understood. *Id.* McIntyre then asked again to see his mother, a request the officers again denied. *Id.* McIntyre thereafter waived his *Miranda* rights, and within an hour gave police an essentially exculpatory statement. *Id.* at 624.

In addressing whether McIntyre's *Miranda* waiver was invalid, the Court of Appeals noted that "denial of parental access to a juvenile charged as an adult with a crime" is a "very important" factor when applying the totality of the circumstances test. *Id.* at 625. The Court, however, observed that there was evidence the interrogating officers ensured that McIntyre understood his rights, and opined that "there is no indication on the record that McIntyre failed to understand what the officers told him or that any special factors existed to indicate that he was unable to understand the nature of his actions." *Id.* at 624. Although the State failed to introduce any evidence concerning McIntyre's prior experience with the criminal justice system, the Court held that McIntyre knowingly and voluntarily waived his *Miranda* rights. *Id.* at 625.

Like McIntyre, appellant confirmed that he understood what it meant to waive his rights, and agreed to talk to Detective Schrott. In fact, from the accused's viewpoint, the instant case is even less compelling than *McIntyre*. Although the court noted that appellant had inquired about his grandmother, the court observed that, "He never said I don't want to speak to you unless my grandmother's here. He never asked for her presence. It

appeared to this [c]ourt that he was asking for his grandmother for purposes of getting a ride home." Significantly, unlike *McIntyre*, appellant did not even ask whether he could get a ride from his grandmother until approximately fifteen minutes after he agreed to waive his *Miranda* rights.

The totality of the remaining circumstances surrounding appellant's interrogation are unremarkable. The circuit court found that appellant was sixteen years old, that he could read and write, and that he was not under the influence of drugs or alcohol. Noting that appellant indicated he had spent time at a juvenile detention center and that he had some experience with a probation officer, the court found that appellant had the knowledge, education, experience, and capacity to understand the consequences of waiving his rights, and concluded that appellant "understood exactly what was going on."

After reviewing the suppression hearing record, we conclude that the circuit court's findings of fact were not clearly erroneous. We note that at sixteen years old, appellant was one year older than the defendant in *McIntyre*. *Id.* at 609. Appellant also indicated to Detective Schrott that he could read and write, and that he was attending high school. *See Holmes*, 116 Md. App. at 553 (holding that a seventeen-year-old who had completed the eleventh grade validly waived his *Miranda* rights when there was no indication he did not understand his rights). Furthermore, unlike in *McIntyre*, the State introduced evidence that appellant had some prior experience with the criminal justice system. Accordingly, we hold that the court properly concluded that appellant validly waived his *Miranda* rights.

B. Appellant's Post-*Miranda* Statements Were Voluntary

During his interview with Detective Schrott, appellant repeatedly denied any involvement in the murder, and insisted that his grandmother would confirm his alibi. While appellant did not make any inculpatory statements, he did make statements that police considered to be inconsistent with information they had obtained during their investigation. Appellant contends that his post-*Miranda* statements were not voluntary because of his grandmother's absence, combined with the fact that Detective Schrott improperly encouraged appellant to talk by advising appellant that he was not interested in appellant's drug activity.

When determining whether a juvenile has made a voluntary statement to police, we employ the same totality of the circumstances test that we use when determining the validity of a juvenile's *Miranda* waiver. *McIntyre*, 309 Md. at 621. Here, in addition to concluding that appellant merely asked for his grandmother for purposes of getting a ride home, the circuit court also considered "the time frame, the length of the interaction, the times that the detective came in and out of the room and how [appellant] was treated during the course of the interrogation." The court found that "in considering the totality of the circumstances, I do find the statement was voluntary." We agree. As stated above, the record reflects that appellant "understood exactly what was going on" and did not request his grandmother's presence at the interview. After appellant asked whether his grandmother could give him a ride home, Detective Schrott told appellant that he wanted to talk more, but said that he could call appellant's grandmother to let her know that

appellant was at the police station. Appellant did not indicate that he wanted Detective Schrott to do so. Later, appellant denied being at the scene of the murder, and told Detective Schrott that, "I was in the house, you could ask my grandma." However, appellant did not request his grandmother's presence during the interview.

To the extent appellant argues that Detective Schrott induced him to talk by stating that he was not concerned with any drug activity,[13] we note the Court of Appeals has set forth a two-part test for determining whether a defendant's statement to police was the product of improper inducement:

> We will deem a confession to be involuntary, and therefore inadmissible, if 1) a police officer or an agent of the police force promises or implies to a suspect that he or she will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and 2) the suspect makes a confession in apparent reliance on the police officer's statement.

Winder v. State, 362 Md. 275, 309 (2001).

The first part of the test is objective, and requires us to determine "whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration[.]" *Hill v. State*, 418 Md. 62, 76 (2011). "We also require a promise or offer within the substance of the officer's eliciting statement." *Winder*, 362 Md. at 311; *see Hillard v. State*, 286 Md. 145, 153 (1979) (detective improperly induced suspect by promising to "go to bat" for the suspect with the

[13] Detective Schrott told appellant during the interrogation, "I don't care if there's drug activity . . . I don't care about any of that stuff. So anything we talk about with that, that's not my problem. All right? . . . My concern is the murder in Baltimore County."

State's attorney's office and the court). Here, the circuit court found that Detective Schrott "clearly wanted [appellant] to speak to him . . . but he also told him on more than one occasion that he didn't have to." Moreover, the circuit court declined to find any improper threat, promise, or inducement. Indeed, Detective Schrott did not promise or imply that appellant would receive any benefit for providing information about Warren's murder. Detective Schrott merely indicated to appellant that the police were interested in Warren's murder, not appellant's involvement with drugs. In short, the first prong was not satisfied because Detective Schrott's alleged inducement contained no objective promise or offer.

Even if the first prong were satisfied, the second prong "triggers a causation analysis to determine whether there was a nexus between the promise or inducement and the accused's confession." *Winder*, 362 Md. at 311. Here, there was no such causal nexus between the alleged promise or inducement and appellant's statements. Although appellant contends that Detective Schrott encouraged him to talk by implying that he would not be charged with any drug-related offenses, we note that appellant did not make any inculpatory statements to Detective Schrott. *See McIntyre*, 309 Md. at 626 ("Also to be factored into the totality test is that McIntyre's statement was exculpatory and was given shortly after his arrival at the police station under circumstances that disclosed no police coercion.").

Because appellant simply denied involvement in the murder during his interview with Detective Schrott, and taking into account appellant's prior experience with the criminal justice system, we are not persuaded that appellant was pressured into speaking

to Detective Schrott against his will. Based on the totality of the circumstances, we hold that appellant's post-*Miranda* statements to Detective Schrott were voluntary, and that the circuit court did not err when it denied appellant's motion to suppress those statements.

C. Appellant's Phone Number was Properly Obtained

Before advising appellant of his *Miranda* rights, Detective Schrott completed an information sheet for appellant, and in the process asked appellant routine booking questions to verify information such as appellant's name, race, sex, age, home address, and phone number. Appellant acknowledges that *Miranda*'s protections do not apply to routine questions asked of all arrestees during processing or booking. Appellant argues, however, that the routine booking exception is inapplicable here because his phone number was an incriminating piece of evidence.

In *Hughes v. State*, the Court of Appeals addressed the issue of what routine booking questions are permissible without first obtaining a suspect's *Miranda* waiver. 346 Md. 80, 94-95 (1997). There, the Court discussed *Miranda*'s application to routine booking questions, stating that,

> Examples of questions to which the routine booking question exception will ordinarily extend include the suspect's name, address, *telephone number*, age, date of birth, and similar such pedigree information.
>
> Conversely, questions that are "designed to elicit incriminatory admissions" do not fall within the narrow routine booking question exception. . . .
>
> Even if a question appears innocuous on its face, however, it may be beyond the scope of the routine booking question exception if the officer knows or should know that the question is reasonably likely to elicit an incriminating response. Assessment of the likelihood that an otherwise routine question will evoke an incriminating response requires consideration

> of the totality of the circumstances in each case, with consideration given to the context in which the question is asked.

Id. at 95 (emphasis added). In *Clarke v. State*, the defendant Clarke was suspected of theft and taken to the police station, where he invoked his *Miranda* rights. 3 Md. App. 447, 449 (1968). Although officers did not attempt to interrogate Clarke, they asked for his name, address, and place of employment as part of their routine booking procedure. *Id.* After receiving this information, the police checked Clarke's place of employment, where they discovered the stolen property. *Id.* at 449-50.

Although Clarke's answers incriminated him, our Court held that "the questions were routine; were ordinarily addressed to every individual who was subject to the booking procedure; and were not intended to elicit answers which would incriminate [Clarke]." *Id.* at 451. We cited to the Fifth Circuit's reasoning in *Farley v. United States*, 381 F.2d 357 (5th Cir. 1967), a case also involving an address obtained through routine booking questions. *Clarke*, 3 Md. App. at 451. Specifically, we quoted the Fifth Circuit's reasoning that, "The place where Farley lived was, of course, not a matter within Farley's exclusive knowledge, and he no doubt recognized that a little investigation by the officers would locate that place." *Id.* (quoting *Farley*, 381 F.2d at 359).

Here, police already knew appellant's phone number, and associated it with "Tray," whom they later discovered to be appellant after police stopped him and Bradshaw. Even assuming appellant's phone number were somewhat incriminating, it was not a matter within appellant's exclusive knowledge. Furthermore, the record does not reflect that the information sheet questions were intended to elicit incriminatory admissions. Detective

Schrott testified that the questions were intended to obtain background information about appellant, such as his education level, and also to give Detective Schrott an opportunity to assess appellant's capacity to understand the discussion as it progressed toward the topic of appellant's *Miranda* rights. Based on these circumstances, we hold that the circuit court correctly determined that the routine booking exception applied to appellant's phone number. *See Propst v. State*, 5 Md. App. 36, 43 (1968) (holding that defendants' answers to routine booking question on their address were admissible, even though they were convicted of maintaining an apartment for gambling purposes and proof of control over that address was a required element of the crime).

D. Appellant's Call was Not Recorded in Violation of the Wiretap Statute

Finally, appellant argues that the trial court should have suppressed statements he made during a phone call to his grandmother, which he made while in an interview room at police headquarters. Appellant argues that by recording him speaking, the police violated Maryland's wiretap statute, which provides, in relevant part, that it is unlawful to willfully intercept an oral communication. Md. Code (1977, 2013 Repl. Vol., 2018 Supp.), § 10-402(a) of the Courts and Judicial Proceedings Article ("CJP").

Here, the circuit court found that appellant's statements were admissible under CP § 2-403, which provides an exception to the wiretap statute for "recording[s] made by a law enforcement unit of a custodial interrogation of a criminal suspect." However, as we will explain, appellant's statements were not protected by the wiretap statute to begin with, and therefore we need not address whether the exemption under CP § 2-403 is applicable.

As stated above, the wiretap statute generally protects against the unlawful interception of oral communications. CJP § 10-402(a). An "oral communication" is defined as "any conversation or words spoken to or by any person in *private* conversation." CJP § 10-401(13)(i) (emphasis added). Regarding what constitutes a "private conversation," the Court of Appeals has stated, "When an oral communication is intercepted, determining whether a violation of the Wiretap Act occurred hinges on a [fact-finder] determination that at least one of the parties had a reasonable expectation of privacy." *Fearnow v. Chesapeake & Potomac Tel. Co. of Md.*, 342 Md. 363, 376 (1996).

In determining whether a reasonable expectation of privacy exists, we apply the two-pronged inquiry applicable to search and seizure cases set forth in *Katz v. United States*, 389 U.S. 347, 361 (1967). *Malpas v. State*, 116 Md. App. 69, 84 (1997). "We first ask whether [appellant] exhibited an actual, subjective expectation of privacy with regard to his statements. If we answer that question in the affirmative, we then ask whether that expectation is one that society is prepared to recognize as reasonable." *Id.* (internal quotation marks omitted) (quoting *Katz*, 389 U.S. at 361). In other words, the expectation must be "objectively reasonable under the circumstances." *Raynor v. State*, 201 Md. App. 209, 218 (2011) (quoting *Williamson v. State*, 413 Md. 521, 534 (2010)). The burden is on the individual asserting the expectation of privacy to establish both the subjective and objective components. *Id.* at 217-18.

Here, appellant failed to establish that he had an actual or subjective expectation of privacy in the statements he made during the phone call to his grandmother. After being

placed in leg shackles and informed he was being charged with felony murder, appellant was permitted to make phone calls on a police-provided phone while sitting in a police interview room with the door open. Appellant did not testify at the suppression hearing or at trial and produced no evidence concerning his subjective expectation of privacy while in the police station. We hold that appellant failed to satisfy his burden to demonstrate a subjective expectation of privacy in the statements he made while on the phone. Even if appellant could establish a subjective expectation of privacy, we express doubt as to whether that expectation would be one society is prepared to recognize as reasonable. *See Maryland v. King*, 569 U.S. 435, 462 (2013) ("The expectations of privacy of an individual taken into police custody 'necessarily [are] of a diminished scope.'" (quoting *Bell v. Wolfish*, 441 U.S. 520, 557 (1979))).

Lastly, even assuming that the only statement from appellant's phone conversations that he identifies as prejudicial—his statement that he "caught a body"—was improperly admitted, any error was harmless. To prevail under a harmless error analysis, the beneficiary of the alleged error must satisfy the appellate court "that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). Here, after the State introduced portions of the recording into evidence at trial, appellant's trial counsel clarified during Detective Schrott's cross-examination that "caught a body" is slang for "charged with murder." Because the jury already knew that appellant was charged with murder, we fail to see how the admission of appellant's

statement contributed to the jury's verdict. *See id.* at 652-53 (noting that the erroneous admission of cumulative evidence has been held to be harmless error).

IV. The Call Detail Records

Appellant next argues that the trial court improperly admitted records from his cell phone provider into evidence. Detective Christopher Needham, who was investigating Warren's murder, testified that he obtained appellant's cell phone records on November 13, 2014, and that those records were later certified on November 13, 2015.[14] Appellant's cell phone records were subsequently introduced into evidence as exhibits 61-A and 61-B. Upon review of the record, we note that exhibit 61-A consists of subscriber sheet and call detail records for appellant's phone number, and exhibit 61-B consists of a master cell tower list. The certification for exhibits 61-A and 61-B certifies that the records are an accurate reproduction of "subscriber information, call detail records with cell site information, [and] cell tower identification list."

The State introduced exhibits 61-A and 61-B into evidence under Maryland Rule 5-803(b)(6), which allows records of regularly conducted business activity to be admitted into evidence as an exception to the hearsay rule. Appellant, however, claims that these phone records were not properly certified and authenticated because the certification that

[14] In relation to Epps's phone records, which came from Sprint, Detective Needham testified that when requesting certification of records from telephone providers, he would "provide Sprint the Sprint case number, and they use that case number to check in [sic] database to find out which records they give us, then they certify those records, the ones that they gave us . . . last year." Detective Needham testified that he followed the same process in obtaining appellant's phone records and certification.

Detective Needham received was created a year after the records were made, and because Detective Needham duplicated the certification and attached it to both exhibit 61-A and 61-B. According to appellant, this process did not comply with Rule 5-902, which sets forth the procedure by which records of regularly conducted business activity may be certified.

We first address appellant's contention that the certification had to be provided contemporaneously with the record. Rule 5-803(b)(6) provides, in pertinent part, that a record is not excluded by the rule against hearsay if it is a record "made at or near the time of the act, event, or condition . . . by a person with knowledge." The Rule does not require that the *certification* be made near the time that the record is created. Rather, the Rule merely requires that the *record itself* be created at or near the time that the act, event, or condition occurred. Appellant misunderstands the mandates of the Rule, and, accordingly, his argument regarding the timing of the certification lacks merit.

The second part of appellant's argument—that the requirements of Rule 5-902 were not satisfied because the certification that Detective Needham received was not attached to any record and could not have been applied to both exhibit 61-A and 61-B—equally lacks merit. . Under Maryland Rule 5-902(b)(1), "Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803(b)(6) that has been certified pursuant to subsection (b)(2) of this Rule." Subsection (b)(2) in turn states that

"the original or duplicate of the record shall be certified in substantially the following form[,]" and sets forth an example of a permissible certificate. Md. Rule 5-902(b)(2).

Here, the certification for exhibits 61-A and 61-B states that the records are an accurate reproduction of "subscriber information, call detail records with cell site information, [and] cell tower identification list." Exhibit 61-A consists of appellant's subscriber sheet and call detail records. Exhibit 61-B consists of the master cell tower list. The fact that the State bifurcated this single record into two exhibits—61-A and 61-B—does not negate the fact that the certification clearly applies to the contents of both. The State did not attach an inapplicable certification to a separate exhibit.[15] The trial court, therefore, did not abuse its discretion in admitting these phone records into evidence.

V. Hearsay Statements During Bradshaw's Testimony

Next, appellant challenges the admissibility of Bradshaw's testimony regarding appellant's statement made immediately after the burglary and murder. Specifically, Bradshaw testified that, "When we got on the highway, I asked him why the 'F' . . . did they kill him -- and [appellant] said they told him to do it." In his appellate brief, appellant asserts that his statement, "together with the testimony that Chadon Bradshaw saw

[15] To the extent appellant suggests that the certification must be physically or otherwise attached to the corresponding record, we note that Detective Needham received a digital copy of the records. Although the sample form provided by Rule 5-902(b)(2) mentions "attached records," the Rule does not require any sort of physical or digital attachment. Furthermore, as stated above, the certification at issue clearly encompasses the contents of both exhibit 61-A and 61-B.

(continued)

[appellant] handling a gun after the shooting," should not have been admitted and was not harmless because it could have contributed to the jury's verdict.[16]

At trial, the court admitted Bradshaw's testimony that "[appellant] said they told him to do it" pursuant to Maryland Rule 5-803(a)(5), which permits the admission of a hearsay statement when it is made by "a coconspirator of the party during the course and in furtherance of the conspiracy." However, we need not consider whether appellant's statement was admissible under Rule 5-803(a)(5), because it would have been admissible under Rule 5-803(a)(1), which permits the admission of a party's own statement. When a statement is made by a defendant, relevant to a material fact, and offered by the State against that defendant, we have held that it is admissible under the party-opponent hearsay exception. *McClurkin v. State*, 222 Md. App. 461, 483 (2015). This is precisely what occurred here.

Although the trial court did not rely on this ground to admit the statement, "where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm." *Robeson v. State*, 285 Md. 498, 502 (1979). Therefore, even if appellant's statement were not made during the course of the conspiracy,

[16] Appellant argues that Bradshaw's testimony that appellant said, "They said, 'Hurry up,'" was inadmissible. A thorough review of the record, however, reveals that Bradshaw did not testify that appellant stated "They said, 'Hurry up.'" Instead, Bradshaw testified that "[appellant] said they told him to do it."

we hold that the trial court did not err in allowing Bradshaw to testify that "[appellant] said they told him to do it."

VI. The Evidence Was Sufficient

Finally, appellant argues that his convictions must be reversed because the evidence was insufficient to support them. Specifically, appellant contends that: (1) there was insufficient evidence that he entered 7851 St. Claire with the intent to commit theft or a crime of violence, (2) there was insufficient evidence of conspiracy, (3) there was insufficient evidence that he used a firearm in the commission of a felony, and (4) there was insufficient evidence to show premeditation.

The standard of review for the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hobby v. State*, 436 Md. 526, 538 (2014) (quoting *Derr v. State*, 434 Md. 88, 129 (2013)). "The test is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Painter v. State*, 157 Md. App. 1, 11 (2004) (internal quotation marks omitted) (quoting *Mora v. State*, 123 Md. App. 699, 727 (1998)). In applying this test, "[w]e defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence." *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal quotation marks omitted) (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)).

A. Evidence of Intent to Commit Theft

Appellant first argues that there was no evidence of intent to commit theft and that the evidence did not support the conviction for first-degree burglary. According to appellant, he entered 7851 St. Claire "with the intent to obtain clothing." Appellant argues that the evidence only supported that he entered 7851 St. Claire with the intent to accomplish a repossession of clothing, rather than a theft, which he contends does not support a conviction for first-degree burglary.

Md. Code (2002, 2012 Repl. Vol., 2018 Supp.) § 6-202(a) of the Criminal Law Article ("CR") defines first-degree burglary as the breaking and entering of the dwelling of another with the intent to commit theft. CR § 7-104(a), which defines theft, provides that:

> A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> (1) intends to deprive the owner of the property;
>
> (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

The Court of Appeals has repeatedly held that "the intention at the time of the break may be inferred from the circumstances." *Winder*, 362 Md. at 329; *see also Reed v. State*, 316 Md. 521, 527 (1989); *Ridley v. State*, 229 Md. 281, 282 (1962).

Here, the jury heard evidence that Bradshaw had recruited appellant to help her recover clothes which she had stolen in North Carolina. Epps broke into the house by entering through a back window, and opened the back door for appellant and the others to enter. While in the house—which no one in the group knew for sure was the correct house—appellant helped Bradshaw search for clothes that did not legally belong to her. A rational fact finder could conclude that appellant broke and entered the Warren house with the intent to deprive Forde of property.[17]

B. Evidence of Conspiracy

Appellant next challenges the sufficiency of the evidence to establish the existence of an unlawful conspiracy. Conspiracy is defined as "the combination of two or more persons, who, by some concerted action, seek to accomplish some unlawful purpose, or lawful purpose by unlawful means." *Rich v. State*, 93 Md. App. 142, 151 (1992), *vacated on other grounds*, 331 Md. 195 (1993). Appellant notes that Bradshaw did not testify as to an overt agreement to commit a burglary. According to appellant, without direct evidence showing an agreement to commit the theft, the evidence was insufficient to sustain the conviction for conspiracy to commit burglary.

Viewing the facts in the light most favorable to the State, the evidence showed that appellant willingly traveled with Bradshaw, Epps, and Murphy to a house he had never

[17] We express doubt that appellant, as a confederate to Bradshaw's plan, could even claim the defense of interest in property pursuant to CR § 7-110 when there was no evidence that appellant had an interest in the property that was the subject of the theft. Appellant has provided no legal support for this position.

been to in order to repossess clothes that did not belong to him. Once at the house, Epps illegally entered through a window and opened the back door for appellant to enter. Even assuming a lawful purpose (which we need not assume under the applicable standard here), appellant aided in the attempted recovery of clothes through unlawful means. In actuality, appellant's purpose was not lawful. He broke and entered another's house with the intent to deprive Forde of property. The evidence was sufficient to establish a conspiracy to commit burglary.

C. Evidence of Use of a Firearm

Appellant argues that the evidence was insufficient to support his conviction for use of a firearm in the commission of a felony because the murder weapon was never recovered, thus precluding experts from matching the bullets to the gun. CR § 4-204(a) defines a "firearm" as:

> (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
>
> (ii) the frame or receiver of such a weapon.
>
> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

Bradshaw testified that she saw appellant pointing a gun at Warren, and that Murphy told her to leave because appellant was going to kill Warren. Additionally, Bradshaw testified that she heard several loud gunshots. Finally, Warren died of gunshot wounds. That the State could not recover the firearm is not fatal to its case for sufficiency purposes. This Court has previously stated,

> It is one thing to say that, where the weapon alleged to be a handgun is produced and examined, and the evidence either shows that it was not a handgun or fails to demonstrate adequately that it was, there can be no conviction. It is quite another to extend the 'sufficiency' theory to produce the same result when, despite credible testimony that the assailant used a weapon described as a handgun, a small pistol, the weapon was not subject to empirical examination because it was not recovered. There is no suggestion . . . that a conviction is unobtainable under this latter circumstance.

Brown v. State, 64 Md. App. 324, 335 (1985) (quoting *Couplin v. State*, 37 Md. App. 567, 578 (1977), *cert. denied* 281 Md. 735 (1978), *overruled in part on other grounds by State v. Ferrell*, 313 Md. 291 (1988). The evidence was sufficient to sustain appellant's conviction.

D. Evidence of Premeditation

Appellant argues that the State failed to prove premeditation, an element of first-degree murder. The Court of Appeals has stated that "[t]o be 'premeditated' the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time." *State v. Raines*, 326 Md. 582, 589 (1992) (quoting *Tichnell v. State*, 287 Md. 695, 717-18 (1980)).

Here, Bradshaw testified that she saw appellant pointing a gun at Warren, that Murphy told her to leave because appellant was about to kill Warren, and that she heard five or six gunshots after leaving the house and getting into her vehicle. While appellant acknowledges that Bradshaw's testimony is relevant to the issue of premeditation,

appellant contends that Bradshaw was not a credible witness, and argues that the State produced no direct evidence of intent.

We remind appellant that, "In a jury trial, judging the credibility of witnesses is entrusted solely to the jury, the trier of fact; only the jury determines whether to believe any witnesses, and which witnesses to believe." *Robinson v. State*, 354 Md. 287, 313 (1999); *see also Raines*, 326 Md. at 591 (holding that it was error for the Court of Special Appeals to conduct its own independent credibility analysis). Furthermore, we have recognized that "[o]rdinarily, premeditation is not established by direct evidence. Rather, it is usually inferred from the facts and surrounding circumstances." *Pinkney v. State*, 151 Md. App. 311, 336 (2003) (quoting *Hagez v. State*, 110 Md. App. 194, 206 (1996)). The Court of Appeals has acknowledged that the intent to kill may be inferred "from the act of directing a dangerous weapon at a vital part of the human anatomy," and that such an act will support a jury's finding that a murder was willful, deliberate, and premeditated. *Raines*, 326 Md. at 591.

As stated above, Bradshaw saw appellant pointing a gun at Warren and heard multiple gunshots after she left the house. There was sufficient evidence for a rational fact finder to conclude that the murder of Warren was premeditated.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.