Circuit Court for Wicomico County
Case No. C-22-CR-17-000606

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 182

September Term, 2019

RICHARD ALLEN THURSTON

v.

STATE OF MARYLAND

Berger,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 3, 2020

Appellant, Richard Allen Thurston, was convicted by a jury sitting in the Circuit Court for Wicomico County of various burglary, firearm, and ammunition offenses.[1] Appellant raises the following six questions on appeal, which we have slightly rephrased for clarity:

> I. Did the suppression court err when it denied appellant's motion to suppress his statement to the police because his *Miranda*[2] waiver was invalid?
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> II. Did the circuit court fail to comply with Md. Rule 4-215(e), governing the right to discharge counsel?
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> III. Did the trial court abuse its discretion by allowing the jurors to separate for two weeks during trial?
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> IV. Did the trial court abuse its discretion when it denied appellant's motion for judgment of acquittal because the evidence was insufficient to sustain his convictions?
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> V. Was appellant denied the right to effective assistance of counsel because his counsel would not litigate his allegation that the Wicomico County Commissioner violated his Fourth Amendment Rights?
>
> VI. Did the trial court violate appellant's due process rights when it quashed appellant's subpoena for the Wicomico County Commissioner and curtailed the scope of the

[1] Appellant was convicted of burglary in the first-, third-, and fourth-degrees and five counts related to the illegal possession of firearms and ammunition: possession of a regulated firearm by a disqualified person; possession of a rifle by a disqualified person; two counts of possessing a stolen firearm; and possession of ammunition by a disqualified person. The court sentenced appellant to consecutive sentences of twenty years of imprisonment for first-degree burglary; five years for possession of a regulated firearm by a disqualified person; three years for possession of a rifle by a disqualified person; and one year for possession of ammunition by a disqualified person. Appellant's remaining convictions were merged for sentencing purposes.

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

> State's examination of its witness regarding the Commissioner's actions?

For the following reasons, we shall affirm the judgments.

I.

A. Standard of review

On review of a motion to suppress, we apply the following long-held standard:

> [W]e view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (quotation marks and citation omitted).

B. Suppression hearing facts

Appellant was charged with various crimes related to a residential burglary in Pittsville, Maryland. Prior to trial, appellant moved to suppress the statement he made to the police less than a month after the burglary, arguing, among other things, that his *Miranda* waiver was invalid.[3] The two detectives who conducted the interview, William

[3] At the suppression hearing, the defense focused on the validity of appellant's *Miranda* waiver, but the court ruled on two issues: whether there was compliance with *Miranda and* whether appellant's statement was knowing and voluntary. Appellant argues in his brief that he seeks review of the suppression court's "ruling," however, he cites no law other than *Miranda* law and he makes no argument other than the validity of his *Miranda* waiver. Because the only argument he asserts on appeal is the validity of his *Miranda* waiver, we shall not address whether his statement to the police was knowing and voluntary. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.") (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)). *See also* Md. Rule 8-504 (governing the

Oakley and Matt Clark with the Wicomico County Sheriff's Office, testified for the State. Additionally, the State introduced into evidence a video of appellant's police interview and the *Advice of Rights* form he signed. Appellant testified in support of his motion. The following was elicited at the suppression hearing.

Detective Oakley testified that he was the lead investigator for a residential burglary that had occurred in Pittsville on July 29, 2017. A few weeks after the burglary, on August 18 around 5:00 p.m., appellant was arrested in Somerset County pursuant to a Wicomico County arrest warrant and brought to the Wicomico County police station for questioning. Detective Clark brought appellant from the holding cell to the interview room, and he and Detective Oakley began the interview around 7:45 p.m. The interview, which lasted less than three hours, was audio and visually recorded.

Detective Oakley testified that when appellant was brought into the interview room, he read him his *Miranda* rights using a standardized form. While giving appellant his *Miranda* advisements, appellant twice stated that he felt intimidated and threatened, but the detective understood appellant to be referring to his arrest, and not to the detectives or anything that occurred in the interview room. Appellant also twice asked during the advisements about the nature of the charges against him. The detective told him that he would discuss the charges with him after he had reviewed appellant's *Miranda* rights with him. Detective Oakley explained at the suppression hearing that he preferred to proceed

contents of an appellate brief and providing that an appellate court may dismiss an appeal for a party's failure to comply with the requirements of the Rule).

with *Miranda* first "because it usually generates a lot of questions, so then we're right back to having a conversation that I'm not going to have until *Miranda* is covered." Nonetheless, while advising appellant of his *Miranda* rights, the detective did tell appellant that he wanted to ask him about a theft that had occurred in the area of the Dollar General in Pittsville.

Detective Oakley testified that he knew appellant was arrested outside a bar before he was brought to the police station, and appellant had said during the interview that he had had a couple of beers earlier in the day. However, the detective also knew that appellant had been detained for several hours between his arrest and the interview, and the detective did not smell alcohol on appellant in the small interview room. The detective found appellant responsive to his questions and understandable. The detective testified: "[Appellant] had no problems answering any questions [] asked. He was fully aware of his surroundings. I saw no issues with the comprehension of anything that was being said. Quite the opposite, he was very confident[.]"

Both detectives testified that they did not use force or threats at any time during the interview nor did they make appellant any promises. Detective Oakley admitted, however, that when he first began speaking to appellant, he mistakenly had not taken off his service weapon, which was at his side. When he realized it, he exited the room, secured the weapon, and returned to the room. He testified that he did not intentionally bring it into the interview room, and he never threatened appellant with it. Detective Oakley testified that at no time during the interview did appellant ask for an attorney. Although appellant

refused to initial each individual right on the *Miranda* form, he signed below each of the two statements at the end of the form waiving his rights.[4]

After appellant signed the waiver, the detectives asked him questions about his whereabouts when the burglary occurred. Appellant initially stated that he was in Baltimore County visiting his nieces but, when shown photographs taken by the surveillance cameras of a store in the area of and at the time of the burglary, he admitted that the photographs were of him and his truck. Near the end of the interview, Detective Oakley gave appellant the application for statement of charges and a copy of the arrest warrant. After the interview, appellant was taken to the Commissioner's Office.

[4] The **Advice of Miranda Rights** form listed five rights:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law[.]
3. You have the right to talk to a lawyer and have them present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer questions or make any statements.

Under the above listed rights were two statements: "I have read or had read to me this explanation of my rights" and "I fully understand each of these rights and am willing to answer questions without consulting a lawyer or having a lawyer present at this time. My decision to answer questions is entirely free and voluntary and I have not been promised anything nor have I been threatened or intimidated in any manner."

Appellant testified in support of his motion to suppress. He testified that prior to his arrest, he had been at a bar for about an hour and a half where he had three shots of liquor and two beers. He testified that he left that bar, drove across the street to a second bar, and as he exited his vehicle, he was arrested by the police and taken to the police station where he was placed in a holding cell. Although he asked the arresting officers what he was charged with, he testified they would not tell him. While in the holding cell, he asked Detective Oakley for his cell phone so he could call his attorney.[5] When he was taken from the holding cell to the interview room, he also asked Detective Clark what he was being charged with, and the detective said, "I can't tell you."

Appellant testified that while being advised of his *Miranda* rights, he told the detectives that he felt threatened and intimidated when he was handcuffed and arrested because he was not told with what he was charged. He testified at the suppression hearing that he also felt threatened and coerced into signing the *Miranda* form because he believed that the police were not going to tell him what he was being charged with until he did. He testified that it was only toward the end of the interview that he was advised of the charges against him when he was given a copy of the charging document. He claimed he could not read it, however, because he did not have his eyeglasses.[6] He also claimed that he was under the influence of alcohol when he signed the *Miranda* waiver.

[5] Detective Oakley, who was recalled by the State after appellant testified, stated that appellant never asked for his cell phone.

[6] Appellant can be seen on the video at the end of the interview reading the charging documents with his glasses on.

After the above testimony was elicited, defense counsel argued that appellant did not knowingly and voluntarily waive his *Miranda* rights because he twice told the detectives that he felt threatened and intimidated when he was handcuffed and not told the charges against him, and because the interviewing detectives would not tell him with what he was charged with until after he signed the form. The State responded that appellant's *Miranda* waiver was valid. The State argued that appellant was not intoxicated when he signed the form, and the police had sufficiently advised him that he was being questioned about a theft in Pittsville before he signed the form.

The suppression court denied appellant's motion to suppress. The court ruled, among other things, that there was no *Miranda* violation and credited Detective Oakley's version of events. The court noted that appellant was interviewed at the police station by two detectives wearing civilian clothes for three hours, during which appellant appeared confident, telling the detectives that he was very experienced with the criminal justice system from his prior contact. The court stated that although appellant testified at the hearing that he was impaired by alcohol, Detective Oakley testified that he did not detect the odor of alcohol, and appellant appeared on the video to be "very alert, cogent" and there was "nothing . . . that would suggest that he was impaired in any way." The court noted that although appellant testified that he was intimidated when he was arrested, there was little to suggest that what occurred during the arrest three hours earlier carried over to the interview. The court also found appellant's argument unpersuasive that he was induced into waiving his *Miranda* rights so he could receive a statement of the charges. The court noted that appellant was told early in the interview the general nature of the charges – that

it related to a theft near the Dollar General store in Pittsville. The court also stated that Detective Oakley's rationale for not telling appellant the charges against him until after he waived his *Miranda* rights was reasonable.

C. Argument

Appellant argues on appeal that the suppression court erred when it denied his motion to suppress his statement to the police because his *Miranda* waiver was invalid. He advances two reasons why his *Miranda* waiver was invalid: 1) he was impaired by alcohol when he was arrested, and 2) he was not told of the charges he was facing before he waived his rights and this made him feel threatened. The State argues the suppression court did not err. We agree with the State.

D. Discussion

The Fifth Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6-7 (1964), protects individuals from being compelled to make self-incriminating statements.[7] In the water-shed case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court recognized that a "police-dominated atmosphere" can be inherently coercive and potentially work to "undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." 384 U.S. at 445, 467. "In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and

[7] "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V.

the exercise of those rights must be fully honored." *Id*. at 467. Accordingly, the Supreme Court set out the following prophylactic warnings that law enforcement personnel are required to convey to a suspect before any custodial interrogation:

> [A suspect] must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479.

The rights accorded by *Miranda* can be waived, but the State has a "heavy burden" to establish that a suspect has waived those rights by a "preponderance of the evidence." *Id*. at 475 (citations omitted) and *McIntyre v. State*, 309 Md. 607, 615 (1987) (citations omitted). To meet this burden, the State "must show that the waiver was knowing, intelligent, and voluntary[.]" *Maryland v. Shatzer*, 559 U.S. 98, 104 (2010) (citation omitted). Although the "courts must presume that a defendant did not waive his rights [and the State's] burden is great[,]" because the adequacy of a suspect's *Miranda* waiver is whether the defendant *in fact* knowingly and voluntarily waived his *Miranda* rights, waiver may be "inferred from the actions and words of the person interrogated." *North Carolina v. Butler*, 441 U.S. 369, 373 (1979) (footnote omitted).

The Court of Appeals has addressed the factors to consider when determining whether a suspect has validly waived *Miranda*:

> In evaluating the validity of a waiver in a given case, the court must consider the particular facts and circumstances surrounding that case, including the background, experience,

> and conduct of the accused. This inquiry has two distinct dimensions:
>
> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.
>
> This approach requires an examination of all the circumstances surrounding the interrogation, including the individual's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Gonzalez v. State, 429 Md. 632, 651-52 (2012) (quotation marks and citations omitted).

Appellant's first assertion, that his *Miranda* waiver was invalid because he was impaired by alcohol, is unpersuasive, and the facts found by the suppression court largely dictate our conclusion. The suppression court rejected appellant's claim that he was impaired by alcohol, relying on Officer Oakley's testimony that he did not smell alcohol on appellant and appellant was responsive to his questions and understandable, and appellant's appearance on the video where, according to the court, appellant was "alert," "coherent," and "nothing . . . suggest[ed] that he was impaired in any way."

Appellant's second assertion, that his *Miranda* waiver was invalid because he was not informed of the charges against him before he waived his rights and he felt coerced into signing the waiver to learn of the charges against him, is controlled by a case not cited

by the parties, *Colorado v. Spring*, 479 U.S. 564 (1987). In *Spring*, the respondent, Spring, shot and killed the victim. Sometime after the killing, having received information that Spring was involved in the interstate transportation of stolen firearms, agents of the Bureau of Alcohol, Tobacco, and Firearms set up an undercover purchase of firearms with Spring, and later arrested him. *Id.* at 566. After being advised of his *Miranda* rights, Spring signed a statement that he understood and waived his rights and was willing to answer questions. *Id*. at 567. The agents questioned him about the firearms transactions that led to his arrest and asked him about the shooting of the victim. *Id*. Based in part on the interview, Spring was convicted of the killing. *Id*. at 568-69.

On appeal, Spring claimed that the failure of the agents to inform him of all the potential subjects of interrogation constituted police deception rendering the waiver of his *Miranda* rights involuntary. *Id*. at 569. The Supreme Court rejected that argument. The Supreme Court held that a suspect's awareness of the crimes about which he may be questioned is not relevant to determining the validity of his decision to waive his Fifth Amendment *Miranda* rights. Therefore, the agents' failure to inform Spring of the subject matter of the interrogation could not affect his decision to waive that privilege. The Court stated:

> Spring nevertheless insists that the failure of the ATF agents to inform him that he would be questioned about the murder constituted official "trickery" sufficient to invalidate his waiver of his Fifth Amendment privilege, even if the official conduct did not amount to "coercion." Even assuming that Spring's proposed distinction has merit, we reject his conclusion. This Court has never held that mere silence by law enforcement officials as to the subject matter of an interrogation is "trickery" sufficient to invalidate a suspect's

> waiver of *Miranda* rights, and we expressly decline so to hold today.
>
> Once *Miranda* warnings are given, it is difficult to see how official silence could cause a suspect to misunderstand the nature of his constitutional right—"his right to refuse to answer any question which might incriminate him." *United States v. Washington*, 431 U.S. 181, 188, 97 S.Ct. 1814, 1819, 52 L.E.2d 238 (1977). "Indeed, it seems self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." *Ibid.* We have held that a valid waiver does not require that an individual be informed of all information "useful" in making his decision or all information that "might ... affec[t] his decision to confess." *Moran v. Burbine*, 475 U.S. [412,] 422, 106 S.Ct. [1135,] 1141 [(1986)]. "[W]e have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." *Ibid.* Here, the additional information could affect only the wisdom of a *Miranda* waiver, not its essentially voluntary and knowing nature. Accordingly, the failure of the law enforcement officials to inform Spring of the subject matter of the interrogation could not affect Spring's decision to waive his Fifth Amendment privilege in a constitutionally significant manner.
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> * * *
>
> This Court's holding in *Miranda* specifically required that the police inform a criminal suspect that he has the right to remain silent and that *anything* he says may be used against him. There is no qualification of this broad and explicit warning. The warning, as formulated in *Miranda*, conveys to a suspect the nature of his constitutional privilege and the consequences of abandoning it. Accordingly, we hold that a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege.

Spring, 479 U.S. at 576-77 (footnotes omitted) (emphasis added).

Spring is directly on point. The "Advice of Rights" form that was read to appellant conveyed in clear language each of the warnings required by *Miranda*. *See Miranda*, 384 U.S. at 444-45. Knowledge of what he was charged with would no doubt have been useful to appellant in calculating the wisdom of answering the detectives' questions. Nonetheless, the failure to inform appellant of the specific charges was not "constitutionally significant," because the lack of that information did not prevent appellant from understanding the nature of his rights and the legal consequences of waiving them. *See Spring*, 479 U.S. at 577. Moreover, although there is no evidence that the detectives advised appellant of the specific charges against him before he waived his *Miranda* rights, it is undisputed that he was advised prior to waiving his rights that he was suspected of committing a theft in Pittsville. Therefore, contrary to appellant's argument, he was aware of the subject matter of the interrogation. In sum, based upon our review of the record developed at the suppression hearing, we conclude that the circuit court properly denied appellant's motion to suppress his statement to the police.

II. There was no Md. Rule 4-215(e) violation.

Appellant argues that his convictions must be reversed because at a hearing on September 12, 2018, to discuss his motion to discharge his then current counsel, the circuit court violated Md. Rule 4-215(e) by failing to: 1) expressly determine on the record whether he had a meritorious reason for his request to discharge counsel, and 2) "advise [him] that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel." The State responds that the hearing court did not violate Rule 4-215(e). We agree with the State.

"The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights." *Jones v. State*, 175 Md. App. 58, 74 (2007) (citing *Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963) and *Walker v. State*, 391 Md. 233, 245 (2006)), *aff'd*, 403 Md. 267 (2008) (footnote omitted). A defendant in a criminal prosecution therefore has a constitutional right to have effective assistance of counsel and the corresponding right to reject that assistance and represent himself. *See Powell v. Alabama*, 287 U.S. 45, 71 (1932) (recognizing the constitutional right to the effective assistance of counsel) and *Faretta v. California*, 422 U.S. 806, 807 (1975) (recognizing the constitutional right to defend oneself). *See also Snead v. State*, 286 Md. 122, 123 (1979) (recognizing that a defendant has both the constitutional right to the assistance of counsel and the right to proceed *pro se*).

Md. Rule 4-215(e) was adopted to protect these constitutional guarantees and provides:

> (e) **Discharge of Counsel - Waiver.** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

In sum, three steps occur when a defendant makes a request to discharge counsel: the defendant explains his reasons for wanting to discharge counsel; the court determines whether the reasons are meritorious; and the court advises the defendant and takes other action depending on whether the court finds good cause (a meritorious reason) to discharge counsel. *State v. Westray*, 444 Md. 672, 674-75 (2015) (citation omitted). "The provisions of the rule are mandatory and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010) (quotation marks and citation omitted). Accordingly, we review a circuit court's compliance with Rule 4-215 de novo. *State v. Graves*, 447 Md. 230, 240 (2016) (citation omitted).

At the hearing on September 12, 2018, the parties discussed appellant's motion to discharge his panel-appointed counsel, Mr. Randrup.[8] The court noted that a pretrial hearing was set for five days from then and trial was set for the end of the month. After re-advising appellant of the charges against him, the court asked him why he wanted to discharge his attorney. Appellant explained in a lengthy, circumlocutory manner that Mr. Randrup had both improperly included and excluded information in his *Franks* hearing[9] motion and "deliberately sabotaged" the *Franks* hearing. Mr. Randrup agreed with the court's assessment that appellant and he disagreed on the way the case should be tried.

[8] Appellant was represented by the following attorneys (in the order of their appearance) that he either discharged or requested that their appearance be stricken: Assistant Public Defender ("APD") Tamika Fultz; APD Arch McFadden; Richard Savington, Esq., panel attorney; and Anders Randrup, III, Esq., panel attorney. At trial, appellant proceeded *pro se* with appointed standby counsel, Jan-Paul Lukas, Esq.

[9] *Franks v. Delaware*, 438 U.S. 154 (1978).

Appellant then announced he wanted to proceed *pro se* but also wanted standby counsel. The court asked appellant whether, if he received standby counsel, he was still ready to proceed to trial on September 25, and appellant said he was. The court told appellant that it would try to arrange for standby counsel. The court told appellant, "[W]e are going to try to get you standby counsel" but the Public Defender's Office could say, "we're not going to appoint another attorney for you[,]" and in that case, appellant would have to represent himself. Appellant said he understood. The court then ordered Mr. Randrup stricken from the case without good cause.

On appeal, appellant acknowledges that the court allowed him to "explain his reasons for his request" to discharge Mr. Randrup. Nonetheless, he argues that the court erred when it failed to expressly state on the record whether his request to discharge counsel was meritorious. The State agrees that the court made no express finding of whether appellant's request was meritorious but argues that a meritorious finding was implied. Contrary to both parties' arguments, however, the court in fact expressly stated on the record that appellant's request to discharge counsel was unmeritorious. Accordingly, appellant's argument on this point is without merit.

Appellant also argues that the court failed to advise him, as it was required to by Rule 4-215(e), that if standby counsel did not enter an appearance before the next scheduled trial date, the action would proceed to trial with appellant unrepresented. Contrary to appellant's argument, the record clearly shows that the court informed appellant that he would be expected to proceed to trial unrepresented should standby counsel not be

appointed. Accordingly, we are persuaded that the circuit court did not violate Rule 4-215(e).

III. Jury separation

Appellant argues that the trial court erred when it permitted the jury to separate for two weeks during trial.[10] The State argues that the trial court did not abuse its discretion. We agree with the State.

A trial court is authorized in its discretion, by statute and rule, to permit a jury to separate during the pendency of a criminal trial. *See* Md Code Ann., Cts. & Jud. Proc. Art. § 8-422 ("At any time before or after submission of a case to a jury, a trial judge may allow the jury to separate or be sequestered.") and Md. Rule 4-311(c) ("The court, either before or after submission of the case to the jury, may permit the jurors to separate or require that they be sequestered."). Although neither the statute nor the rule states how long the jury may separate nor the procedure to follow in allowing a separation, we have held that the decision to allow separation of jury from jury service is wholly within the discretion of the trial court and, without both an abuse of discretion and an affirmative showing of prejudice, a trial court's decision will not constitute error. *See* *Veney v. Warden, Md. Penitentiary*, 259 Md. 437, 442 (1970) (a trial court has the discretion to separate the jury prior to submission of the case, and prejudice must be demonstrated and "is not to be presumed

[10] The Court of Appeals has stated that although we shall liberally construe the contents of pleadings filed by *pro se* litigants, unrepresented litigants are subject to the same rules regarding the law, particularly, reviewability and waiver, as those represented by counsel. *Simms v. State*, 409 Md. 722, 731-32 n.9 (2009) (citation omitted). This standard applies to questions III, IV, and VI part B.

from such separation simply because of the possibility of influence or contamination through outside contacts").

At a pretrial hearing, the court asked the parties if they could try the case in two days' time. Both parties responded in the affirmative. On the first day of trial on January 8, 2019, the State called seven witnesses. At the end of the day, the trial court informed the jury that it hoped to finish the next day but that it might be necessary for the jury to stay late.

When trial resumed the next day, January 9, the State called three more witnesses and then rested. Appellant moved for judgment of acquittal, which the court denied. Appellant elected not to testify and expressed his intention to recall State's witness Detective Oakley. The court responded:

> Okay. Can I ask what ground you're intending to cover on direct examination? We've covered a lot of ground with him, I mean a lot of ground. He was on direct examination for an hour and a half, he was on cross-examination for longer than that. I want to understand what else do we have to cover? And quite frankly on cross I let you go beyond the scope of direct to try to, you know, give the opportunity to get as much in as you want.
>
> I'm fine if you want to call him if you have new material to cover on direct examination. But I don't want to call him just to repeat all of the same questions and the same evidence that we have already been over; do you understand?

Appellant said he understood and explained that he wanted to question Detective Oakley to show the State's failure to prove his intent to commit a burglary. Although the court advised appellant that he could summarize the lack of evidence in closing argument,

appellant was adamant that he wished to examine the detective. The court said it would take a ten-minute recess.

When the court reconvened, it informed the parties: "I don't think we're going to get done today. I'm just telling you up front. It is 4:20. Something has come up, we have got to probably stop no later than 5:30ish." The court then explained that the parties could examine Detective Oakley, appellant's only witness, but they would then break and reconvene on January 23, the courts next available trial date. Appellant objected, stating, "That's a lot of time for people to play with a jury that may even be potentially in favor of me." The court overruled appellant's objection, explaining:

> Well, [appellant], we've been here for the better part of two days. I've given you a ton of latitude in asking a lot of questions when I could have cut you off. We could have been done this trial easily by noon today, and I've let you go because you wanted to.
>
> Now something has come up, and I planned on staying late tonight, that is no longer an option. I'm not going to get into what it is, but something has come up, we're not available to stay late tonight at this point.

The court explained, "I have another trial tomorrow. . . . I'm not here Friday and next week I have other dockets." Appellant called Detective Oakley to the stand. After his examination and before the court recessed for two weeks, the court advised the jury:

> I'm going to advise you again, do not discuss this case with anyone or let anyone discuss this case with you or in your presence. This includes other jurors, courtroom personnel, friends, relatives or anyone else. In addition, you should avoid any contact with the parties, witnesses and lawyers involved in this case.

> Please remember that you should not research or investigate the case or the individuals involved in it. Do not do conduct any searches relating to this case in books, newspapers or on the internet, website, blogs, or any other source of information. Do not visit or do any research about locations or places related to the case.
>
> You also must not express any views, comments or opinions about the case to anyone. If anyone tries to discuss the case with you, or if you learn that my instructions are not being followed, please write a note, give it to the Bailiff as soon as possible and do not discuss it with anyone else.
>
> Now obviously we have a break here until the 23rd. If anyone for any reason tries to see you out in public, they try to contact you, anyone makes any comments to you, I would request that you please contact the jury office so that they can make me aware of that and we can take appropriate measure.

Appellant argues on appeal that his convictions must be reversed because the trial court did not explain why a two-week recess was necessary. As the State correctly points out, however, that the law does not require a trial court to give an explanation as to why a separation is necessary. Accordingly, this argument is without merit.

Appellant also argues that his convictions must be reversed because "it is impossible to know if the jurors scrupulously followed the trial judge's instructions." Appellant makes this argument while also acknowledging the "record does not include any indication that any of the jurors contacted the judge about improper communications or investigations during the break" and the law provides that there is no presumption of prejudice when separation occurs prior to the submission of the case. *Veney*, 259 Md. at 442, and we find no error by the trial court for the simple reason acknowledged by the appellant – there is no presumption of prejudice and appellant has failed to show any prejudice. Moreover, we

note that during the first two days of trial, the court advised the jurors in detail and numerous times about its responsibility not to discuss the case with others. *Leckliter v. State*, 75 Md. App. 143, 152-53, *cert. denied*, 313 Md. 506 (1988) (recognizing that neither the statute nor the Rule require admonitions to the jury prior to separation and holding that absent any claim that jurors had violated previously issued instructions and discussed the case between themselves following their separation, the trial court's standing policy which allowed separation without additional instructions was not an abuse of discretion).

After empaneling the jury on the first day of trial and before the court took a brief recess, the court advised the jury:

> Until you retire to deliberate and decide this case you may not discuss this case with anyone, even your fellow jurors. You should not express any opinion about the case or discuss the case with anyone, including courtroom personnel, spectators or anyone participating in the trial.
>
> Many of you use cell phones, smart phones or other electronic devices to communicate with family, friends, co-workers or others. During this trial you must not communicate any information or opinions about this case or the individuals involved in it by any method to anyone, including by sending electronic messages.
>
> You may also be involved in social media or networking sites such as Facebook, My Space, Linked In, YouTube, Twitter, Instagram, Snap Chat, whatever else is out there, and may be accustomed to communicating on these sites. During this trial you must not communicate anything or receive any information about this case or the individuals involved in it.
>
> Please stay off social media as it relates to being on jury service. When your jury [service] is done and you want to get on Facebook, Instagram, Snap Chat, that's fine. Please, no selfies in front of the courthouse, look at me today, I'm doing jury duty. Just please refrain from social media as it relates to

your jury service until it's done, it's two days. If you want to be on there about something else, that's fine, but as it relates to your jury service please stay off social media.

You should not allow anyone to talk to you or communicate with you about the case. This includes other jurors, courtroom personnel, friends, relatives or anyone else. Outside the courtroom avoid parties to the case, the lawyers and the witnesses. Do not read, watch or listen to any media reports about the case such as newspaper, television, radio or internet reports. Do not visit any internet sites where there may be reports or discussions of the case. Relying on information from any other source outside the courtroom, including social media sources, is unfair because the parties do not have the opportunity to refute, explain or correct it, and the information may be inaccurate or misleading.

You must base your decision only on the evidence presented in this courtroom.

I realize you may all be surprised by this but sometimes information put on the internet is not truthful. So therefore if you go on tonight, we have a two day case, and you do independent research on the parties, the witnesses, the facts of this case, you may see something that's not true. You read it, you think it's true. The parties don't know that, they don't have an opportunity to refute it. You have to rely on what you hear in the courtroom. Please do not conduct any outside research.

If anyone tries to communicate with you about the case or if you learn of any information during the trial that is not part of the evidence presented in this courtroom or that violates the rule I just explained, please write me a note and give it to the [b]ailiff as soon as possible and do not discuss it with anyone else.

There could be public interest in this case or news coverage or other discussion of it. For that reason do not read any article or other report or watch or listen to any television or radio news report about the case. If anything occurs contrary to these instructions, please write me a note and give it to the [b]ailiff as soon as possible and do not discuss it with anyone else.

Prior to recessing for lunch on the first day of trial, the court advised the jury:

> I'll advise you again, don't discuss the case with anyone or let anyone discuss it in your presence, this includes other jurors, courtroom personnel, friends, relatives or anyone else. Avoid contact with the parties, the witnesses and the lawyer involved in the case. Don't do any outside research or investigation. Do not express any view, comments or opinions about the case. If anyone tries to contact you, please give a note to the bailiff as soon as possible.

At the end of the first day of trial, the trial court again advised the jury:

> I'm going to advise you again as I have before, do not discuss the case with anyone. Do not perform any outside investigation. Do not investigate the parties, the scene that's been testified to, the witnesses. Don't discuss the case with friends, family, co-workers, employers. Please stay away from any other jurors, the parties, the witnesses, until the conclusion of the case.
>
> And again, please stay off social media about your jury service.

At the beginning of lunch on the second day of trial, the court advised the jury:

> So again, I'll remind you again, don't discuss the case with anyone. Please stay away from any of the law enforcement officers or other witnesses or the attorneys. Please don't do any outside investigation or visit the scene of what's being alleged here.

At the end of the State's case on the second day of trial, the court took a recess and advised the jury: "Ladies and gentlemen of the jury, what we'll do is give you about a ten minute recess here. . . . I'll remind you again the case is not ready for your discussion or deliberation. Please don't discuss it even amongst yourselves." And, as related above, prior to recessing for two weeks, the court advised the jury over several paragraphs not to discuss the case during the recess.

For the reasons stated, appellant's argument is without merit.

IV. Sufficiency of the evidence

Appellant argues that the trial court erred in denying his motion for judgment of acquittal and focuses his argument on the State's failure to prove criminal agency, intent to commit a theft, and possession of the firearms and ammunition. The State disagrees, as do we.

The standard for appellate review of evidentiary sufficiency 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.'" *State v. Thomas*, 464 Md. 133, 152 (2019) (quotation marks and citations omitted). *See also Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted) (brackets in *Suddith*). This is because weighing "the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Heather B.*, 369 Md. 257, 270 (2002) (quotation marks and citations omitted). *See also State v. Stanley*, 351 Md. 733, 750 (1998) (It is long settled that "[w]eighing the credibility of witnesses and resolving

any conflicts in the evidence are tasks proper for the fact finder.") (citation omitted) and *Jones v. State*, 343 Md. 448, 460 (1996) (a fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony) (citation omitted). Thus, "the limited question before an appellate court 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." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted).

Several cases have recited the litany that "a conviction upon circumstantial evidence alone will not be sustained unless the circumstances, taken together, are inconsistent with any reasonable hypothesis of innocence." *Hebron v. State*, 331 Md. 219, 224 (1993) (citations omitted). We have stated that these cases "have been understandably vague about what would constitute a case based solely on circumstantial evidence and what would amount to inconsistency with any reasonable hypothesis of innocence." *Hagez v. State*, 110 Md. App. 194, 204 (1996). *See State v. Smith*, 374 Md. 527, 560-61 (2003) (Harrell, J., concurring) (characterizing "reasonable hypothesis" language as difficult to comprehend). We stated that the better test is "whether the evidence, circumstantial or otherwise, and the inferences that can reasonably be drawn from the evidence, would be sufficient to convince a rational trier of fact, beyond a reasonable doubt, of the guilt of the accused." *Hagez*, 110 Md. App. at 204 (citations omitted).

To secure a criminal conviction the State must prove criminal agency beyond a reasonable doubt. *State v. Simms*, 420 Md. 705, 722 (2011). An eyewitness identification of the criminal actor, however, is not necessary to prove criminal agency.

In addition to proving criminal agency, the State must prove the elements of the crime beyond a reasonable doubt. To sustain a conviction for first-degree burglary the State was required to prove that appellant "br[o]k[e] and enter[ed] the dwelling of another with *the intent to commit theft*." Md. Code Ann., Crim. Law Art., § 6-202(a) (emphasis added). Appellant was also convicted of the lesser included offenses of third-degree burglary and fourth-degree burglary, which provide that "[a] person may not break and enter the dwelling of another with *the intent to commit a crime*" and "[a] person may not break and enter the dwelling of another." Crim. Law §6-204(a) (emphasis added) and §6-205(a), respectively. "Because intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Bible v. State*, 411 Md. 138, 157 (2009) (quotation marks and citation omitted).

The State was also required to prove possession of the firearms and ammunition in the safe because "possession is an element of the crime of theft[,]" *In re Landon G.*, 214 Md. App. 483, 495 (2013) (quotation marks and citation omitted), and appellant was convicted of several possession of firearm and ammunition crimes. *See* Md. Code Ann., Public Safety ("PS") Art. §5-133(b) (a person may not possess a regulated firearm, if a disqualified person); PS §5-205(b) (a person may not possess a rifle or shotgun, if a disqualified person); PS §5-138 (a person may not possess a stolen firearm); and PS §5-

133.1(b) (a person may not possess ammunition, if a disqualified person). "'Possess' means to exercise actual or constructive dominion or control over a thing by one or more persons." Crim. Law § 5-101(v). "To prove dominion or control, the evidence must show directly or support a rational inference that the accused . . . exercised some restraining or direct influence over the contraband." *Spell v. State*, 239 Md. App. 495, 511 (2018), *cert. denied*, 462 Md. 581 (2019) (quotation marks and citations omitted). "That contraband is not found on the defendant's person does not prevent the trier of fact from drawing the inference that the defendant was in possession of the contraband." *Id.*

The evidence presented at trial, viewed in the light most favorable to the State, established the following. On July 29, 2017, Kristen and Patrick Davis lived at 7185 Sixty Foot Road in Pittsville, Maryland. That summer, their house was surrounded by cornfields, except in front where directly across the street was a lot where a house once stood. Less than 300 yards to the right of the house was JT's Market and about the same distance to the left was a Dollar General. The house had a front entrance as well as entrances on the right- and left-hand sides of the house. Between noon until around 3:00 p.m., the Davis's were out of their house running errands. The day was overcast and the ground was wet.

When they returned home, they discovered damage to the left-hand side door. It appeared that the door had been kicked in. They also found tire tracks in the yard that went up to the steps of the right-hand side door of the house. Missing from the dining room was a gun safe that contained guns and ammunition.[11] A piece of furniture in the living room

[11] Specifically, the safe contained a handgun, two rifles, two shotguns, and ammunition for each gun.

was nicked, and the floor in front of that piece of furniture was scraped. Mr. Davis described the safe as about five feet tall, three feet wide and weighing about 300 pounds. The Davis's testified that two people could move the safe or one person with a dolly could move it. When they originally bought the safe, they had backed their truck up to the steps of the right-hand side door of the house and used a dolly to bring it into the dining room. Mr. Davis testified that the safe could fit in the bed of a pickup truck. Neither of the Davis's knew appellant nor did they give him permission to enter their house or take their property.

Detective Oakley obtained video surveillance from JT's market during the time the Davis's were gone from the house. The market's owner testified that the date stamp on the video was accurate but the time stamp was off by an hour and a few minutes depending on the time of year because he did not change it for daylight savings time. The video footage was admitted into evidence and played for the jury. On the video, appellant can be seen driving his Dodge Ran truck around 12:45 p.m. into TJ's parking lot and parking. He then puts on a large work-shirt over his button-down shirt. A hand held dolly can be seen in the truck bed. Appellant then drives toward the Davis's house, crosses the street to the vacant lot, returns to the market, and then proceeds away from the area around 1:30 p.m.

Detective Oakley compared measurements he took at the Davis's house to measurements he took of the same make and model truck at a dealership where appellant had purchased his truck several months earlier. The detective testified that the width of the tire tracks in the Davis's yard matched the width of the tire treads of the truck at the dealership. Additionally, the distance between the tire treads of the truck were within a quarter of an inch of being the same as the distance he measured between the tire treads in

the Davis's yard. Also, the distance from the ground to the top of the stairs near the Davis's side door was 38 inches and the distance from the ground to the truck's tailgate was 36 inches. Detective Oakley testified that the truck had a six foot cargo bed, and from the back of the bed to the end of the tailgate was eight feet and three inches. He did not measure the bed of the truck with the tailgate up.

About a month after the burglary, on August 18, 2017 around 4:30 p.m., appellant was arrested pursuant to an arrest warrant as he was exiting his truck in front of a bar/restaurant. His truck was impounded and searched pursuant to a search warrant. Recovered from the bed of the pickup truck was, among other things, a wheeled dolly, a multi-tool Leatherman, three crow bars, a pair of binoculars, and several gloves.

Appellant was transported to the police station where he made a statement after waiving his *Miranda* rights. The interview was audio and visually recorded and a DVD recording of the interview was admitted into evidence and played for the jury. Detective Oakley testified that during the interview appellant did not slur his speech, did not smell of alcohol, and understood the questions asked and gave responsive answers. When asked where he was on the day of the burglary, appellant repeatedly and adamantly stated that he was in Baltimore visiting relatives. The detective even showed appellant a calendar to be sure. When the detective told appellant that his truck was seen in the area of a residential burglary where a number of guns had been stolen, appellant asked, unprompted, "Were they in a safe?" When shown photographs from the market's surveillance cameras, appellant identified himself and his truck but offered no explanation for his presence at

JT's Market. The State introduced evidence showing that appellant had a prior 1997 conviction for first-degree burglary. Appellant did not testify in his defense.

On appeal, appellant presents a long list of alleged insufficiencies in the State's case, specifically, that there was no evidence that he broke into the Davis's house; was in possession of the firearms taken from the Davis's residence; had an intent to commit a theft; or fingerprint or DNA evidence. Additionally, he argues, among other things, that the safe would not have fit in this truck and it would have been physically impossible for him to have loaded the safe onto his truck by himself; the time stamp on the video surveillance was off by an hour and six minutes; he was under the influence of alcohol when he was interviewed; and Detective Oakley testified that he did not see in the surveillance video a safe in appellant's truck as it left the area.[12] The gist of appellant's complaint is to point out holes in the State's case. Contrary to appellant's argument, that is not the standard by which we review a denial of a motion for judgment of acquittal.

Assuming without deciding that appellant has preserved his sufficiency arguments for our appeal, we are persuaded that a jury could find appellant guilty of the crimes charged by reasonably inferring that he drove to the Davis's house, broke in while they were gone, backed his truck across the yard and up to the house, and using a hand-dolly dragged the safe containing the guns and ammunition across the floor, out of the house,

[12] During appellant's cross-examination of Detective Oakley, appellant proffered that he had an 18 inch tool box in the bed of his truck, and appellant argued during closing that it was impossible for him to have stolen the five foot safe because it would not have fit in his six foot bed with his 18 inch tool box. He also argued the impossibility that he, a 59 year-old-man, could have removed the safe by himself in less than half an hour. Neither his proffer nor facts presented in argument during closing consisted of evidence.

and into the bed of his truck and left. The jury could infer his intent to steal the safe and its contents and his possession of the guns and ammunition from the above actions. This was a circumstantial evidence case, and we are persuaded that the evidence was sufficient to sustain his convictions.

V. Ineffective assistance of counsel

Appellant argues that he was denied effective assistance of counsel when his third attorney, APD McFadden, refused to argue his *pro se* motion about alleged violations of his Fourth Amendment rights. The State responds that we should decline to consider appellant's ineffective assistance of counsel claim because it is fact specific and best raised in a post-conviction proceeding. We agree with the State.

"'We have consistently held that the desirable procedure for determining claims of inadequate assistance of counsel, when the issue was not presented to the trial court, is by way of the [Maryland Uniform] Post Conviction Procedure Act.'" *Walker v. State*, 338 Md. 253, 262 (1995) (quoting *Stewart v. State*, 319 Md. 81, 92 (1990)) (brackets added). *See Robinson v. State*, 404 Md. 208, 219 (2008) (Maryland courts "have held repeatedly that a claim of ineffective assistance of counsel should be raised in a post-conviction proceeding, subject to a few exceptions."). This is because the post-conviction setting provides the opportunity for taking testimony and receiving evidence to make factual findings regarding the challenge to counsel's competence. *Walker*, 338 Md. at 262. This is particularly true where the claim does not involve a legal question but centers more on resolving factual questions, *i.e.*, why did defense counsel act in a certain manner. *See Mosley v. State*, 378 Md. 548, 558-572 (2003). Given the secretive nature of trial tactics,

direct review of ineffective assistance of counsel claims will be rare. *Johnson v. State*, 292 Md. 405, 435 n.15 (1982) (declining to address ineffective assistance of counsel claim on direct appeal where facts regarding counsel's performance were neither clear nor undisputed).

In his appellate brief, appellant identifies six alleged Fourth Amendment violations that he argues he tried to raise at trial and that his attorney, APD McFadden, should have but failed to raise when he was his attorney.[13] Appellant contends that if the Fourth Amendment violations "had been properly raised by his counsel prior to his trial and had been successful, then his statement made while in custody and the evidence seized from his pickup truck would not have been admitted at his trial and he would not have been convicted."

[13] Specifically, appellant argues:

> First, that Detective Oakley lied in his statement of probable cause presented to the Court Commissioner, Megan Dickerson. Second, that the charging document issued by the Court Commissioner failed to embody the necessary probable cause standard. Third, his arrest by warrant violated the Fourth Amendment so that everything seized by related search warrants constituted "fruit of the poisonous tree" and should have been suppressed. Fourth, investigators were wrong to obtain a charging document and a warrant for his arrest 18 hours before he was questioned. Fifth, investigators were wrong to obtain search warrants after they interrogated him. Sixth, the search of his pickup truck and the seizure of items from it violated the Fourth Amendment.

This is not a rare case where review of an ineffective assistance claim would be appropriate on direct appeal. During a hearing on March 8, 2018, appellant sought to discharge APD McFadden because his attorney would not present the same issues he now argues constituted ineffective assistance of counsel. APD McFadden, without explanation, advised the hearing court that he could not argue the *pro se* motions for "ethical" reasons. Ultimately, appellant decided to continue with APD McFadden. At trial, appellant attempted to challenge the legality of the search warrant for his pickup truck, and he argued that APD McFadden had provided ineffective assistance of counsel because his attorney did not make this argument at a motions hearing. The court advised appellant that he could raise his argument in a post-conviction motion, but it was not appropriate at trial.

Appellant's claim on appeal regarding the effectiveness of his counsel is fact-centered, *i.e.*, why did APD McFadden act in a certain way, and resolution requires a fact-finding proceeding. This is in contrast to *Testerman v. State*, 170 Md. App. 324 (2006), *cert. dismissed*, 399 Md. 340 (2007) where the unpreserved issue was a question of statutory interpretation, not one of trial strategy, and the facts underlying the question of legal sufficiency of the evidence were fully conceded at trial. For the above reasons, we decline to address appellant's ineffective assistance of counsel argument on appeal.

VII. There was no due process violation.

Lastly, appellant argues that the trial court violated his due process right to present a defense when it quashed a subpoena he filed for Wicomico County District Court Commissioner Megan Dickerson, and by curtailing the State's questioning of Detective

Oakley on the subject of the commissioner's role in what he characterizes in his appellate brief "as a fishing expedition founded on perjury[.]" The State disagrees, as do we.

A. Quashing of the subpoena

Md. Rule 4-266(c), governing subpoenas, permits a circuit court to quash a subpoena "for good cause shown . . . which justice requires to protect the . . . person from annoyance, embarrassment, oppression, or undue burden or expense[.]" The role of a district court commissioner is to receive applications for and determine probable cause in the issuing of warrants and charging documents. Md. Code Ann., Courts and Judicial Proceedings § 2-607(c)(1) and (2).

In the first week of December, a subpoena was issued for Commissioner Megan Dickerson, at appellant's request. The State responded with a motion to quash the subpoena, and appellant filed an answer. The trial court subsequently granted the State's motion to quash.

Appellant argues on appeal the trial court erred in quashing the motion. He argues that he sought to call Commissioner Dickerson at trial to establish that the charges filed against him were not supported by probable cause because they were based on Detective Oakley's false statements. We find no error in the trial court's quashing of the subpoena. First, generally "[a] judge may not be asked to testify about his mental processes in reaching a judicial opinion." *Robinson v. Commissioner of Internal Revenue*, 70 F.3d 34, 38 (5th Cir. 1995) (citing *United States v. Morgan*, 313 U.S. 409 (1941)). Second, there is no suggestion that Commissioner Dickerson's testimony would be relevant to whether Detective Oakley falsely represented the probable cause in the charges filed against him.

Additionally, the trial court found her testimony irrelevant to appellant's contention because appellant was later charged in the circuit court by way of a criminal indictment. Given the above, compelling Commissioner Dickerson's presence at appellant's criminal trial would have been burdensome, annoying, and a waste of judicial resources, and therefore, the trial court did not error in quashing the subpoena.

B. Restricting the scope of direct examination.

Appellant also claims that the trial court erred when it interfered with his defense by curtailing the State's direct examination of Detective Oakley about Commissioner Dickerson's issuance of the arrest warrant and statement of charges. We agree with the State that appellant has failed to preserve this argument for our review, and in any event, the argument is without merit.

At trial, the State elicited from Detective Oakley on direct examination that he wrote the statement of charges based on his investigation, and that he brought the statement to the District Court's Commissioner's Office. The court asked the parties to approach the bench and then advised the State to "stay away" from testimony about the commissioner because it was not relevant as appellant was recharged in circuit court by way of indictment and because "I'm not trying to have the charges bolstered against him by saying the Commissioner made some determination." Appellant did not object to the trial court's ruling, and therefore, he has not preserved his argument for our review. *See* Md. Rule 4-323(a) (a party must object on the record to the admission of evidence or any other court ruling otherwise the objection is waived).

Had appellant preserved his argument for our review, however, we would have been persuaded that the trial court did not abuse its discretion in limiting Detective Oakley's testimony for the simple reason given by the trial court, *i.e.*, that appellant was charged by way of a criminal indictment after the statement of charges were filed. *See Sifrit v. State*, 383 Md. 116, 128-29 (2004) (ordinarily the admissibility of evidence rests in the sound discretion of the trial court, and a trial court's evidentiary ruling shall not be disturbed absent error or a clear abuse of discretion) (citations omitted) and *Nash v. State*, 439 Md. 53, 67 (an "abuse of discretion" occurs "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.") (quotation marks and citation omitted), *cert. denied*, 574 U.S. 911 (2014).

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