

Circuit Court for Montgomery County
Case No. C-15-CR-22-000587

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0530

September Term, 2024

ARASH KHOSH

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: October 30, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In *State v. Hicks*, the Supreme Court of Maryland examined the legislative policy designed to ensure the prompt disposition of criminal cases, thus promoting judicial efficiency and public confidence in the criminal justice system. 285 Md. 310, 316 (1979). Today, that policy is established through the combined effect of a Maryland statute and related court rule, collectively known as the “Hicks rule.”

The Hicks rule provides that if a criminal defendant’s trial occurs later than 180 days following the first appearance of counsel or the defendant before the circuit court, measured by whichever comes first in time, the case must be dismissed. The target date that is 180 days after the first appearance is referred to as the “Hicks date.” Absent the defendant’s consent to a trial date beyond this deadline, the Hicks rule allows for a continuance beyond the Hicks date only for good cause, which must be authorized by the administrative judge of the circuit court.

In this case, we review whether a delay in processing DNA evidence was sufficiently good cause to postpone a trial past the 180-day Hicks date. Appellant Arash Khosh was arrested on May 15, 2022, and charged with first-degree rape, home invasion, and second-degree assault. Shortly before trial, the State filed a motion for continuance past the December 13, 2022, Hicks date because it had submitted DNA evidence for analysis that would take the laboratory an additional ninety days to process. Ultimately, the trial did not take place until February 2024.

Mr. Khosh also asks us to review whether a supplemental jury instruction given after the start of closing arguments was unfairly prejudicial. At trial following the State’s closing argument, the State proposed a supplemental jury instruction to clarify the

definition of “sexual act” as an essential element of the principal charge against Mr. Khosh. The court held that the supplemental instruction was not prejudicial as defense counsel still had an opportunity to make its closing argument.

Mr. Khosh presents the following issues for our review:

- (1) Did the circuit court abuse its discretion by finding good cause to grant an exception to the Hicks rule and postponing Mr. Khosh’s trial past 180 days?
- (2) Did the court abuse its discretion when it gave a supplemental jury instruction clarifying the definition of a “sexual act”?¹

We shall answer both questions in the negative, and therefore affirm the decision of the circuit court.

BACKGROUND

A. The Hicks Rule

Maryland Code, Criminal Procedure (“CP”) § 6-103 and Maryland Rule 4-271 provide that, absent good cause, a criminal defendant’s trial must be scheduled no later than 180 days following the first appearance of counsel or the defendant before the circuit court. The statute and the rule together codified the landmark decision in *State v. Hicks* and are thus colloquially called the “Hicks rule,” while the 180-day deadline is known as

¹ Mr. Khosh phrased the questions as follows:

- (1) Did the trial court abuse its discretion by continuing the case, over Appellant’s objection, past the Hicks 180 day mark purely for the purpose of the state pursuing DNA lab results?
- (2) Did the trial court deny Appellant due process of law by amending the jury instructions at the conclusion of the state’s closing argument?

the “Hicks date.” *Tunnell v. State*, 466 Md. 565, 571 (2020) (citing *Hicks*, 285 Md. at 310).

A claim under this rule is not, however, a “junior varsity speedy trial claim.” *Hogan v. State*, 240 Md. App. 470, 499 (2019). Although both doctrines guide the scheduling of a criminal defendant’s trial date, that is where their paths diverge. In *Hicks*, Chief Judge Robert C. Murphy noted that the rule was not intended as a codification of the constitutional speedy trial right² but rather “stands on a different legal footing[.]” 285 Md. at 320. While the constitutional right to a speedy trial connects to the core principle of due process and vests in the defendant personally, any benefit the defendant enjoys from the application of the Hicks rule is “purely coincidental.” *Hogan*, 240 Md. App. at 499. The primary purpose of the Hicks rule is instead to further the public interest in the prompt disposition of criminal cases. *Tunnell*, 466 Md. at 585 (citing *Hicks*, 285 Md. at 316). Where the Constitution concerns itself with due process, the Hicks rule favors the mantle of judicial efficiency.

Moreover, where many speedy trial statutes “rely on a system of counting and excluding time periods to determine the deadline for commencing a criminal trial[.]” the Hicks rule requires no such calculations. *See Tunnell*, 466 Md. at 582–83. Where, for example, the Federal Speedy Trial Act³ excludes a number of time periods from its

² The Sixth Amendment provides criminal defendants the right to a speedy trial, incorporated against the states by the Due Process Clause of the Fourteenth Amendment. U.S. Const., Amend. VI; *Klopfer v. North Carolina*, 386 U.S. 213, 219 (1967). Article 21 of the Maryland Declaration of Rights likewise provides that “in all criminal prosecutions, every man hath a right . . . to a speedy trial[.]” Md. Const. Decl. Rts., Art. 21.

³ 18 U.S.C. § 3161 *et seq.* Also in contrast to the Hicks rule, a case dismissed under the Federal Speedy Trial Act may be dismissed with or without prejudice. 18 U.S.C. § 3162.

seventy-day countdown, some of those delays must be deemed reasonable while others bear no reference to reasonableness. *See id.* In the Hicks context, reasonableness is the lodestar of the analysis: the Hicks date does not toll but rather serves as a benchmark past which the court may grant a continuance for good cause. *Id.* at 583. The court upon review looks to the reasonableness of the initial decision to postpone the trial and to the reasonableness of the resultant delay. *Id.* at 589 (citing *Rosenbach v. State*, 314 Md. 473, 479–80 (1989)).

B. Factual Background

S.S., a seventy-year-old woman, checked into room 410 of the Hilton Garden Inn on May 14, 2022, to attend her high school reunion. The next morning, the victim’s husband woke early and went to the lobby for coffee. He texted her to tell her where he had gone and told her to text him when she woke. Around 9:10 a.m., S.S. heard a knock at the door. She answered the door with the security chain engaged to a hotel employee accompanied by Appellant Arash Khosh. The employee informed her that Mr. Khosh believed her room, room 410, was his. S.S. replied that the room was not Mr. Khosh’s and closed the door.

The hotel employee took Mr. Khosh down to the hotel’s front desk, where Mr. Khosh produced a room key. The State believes Mr. Khosh obtained this key from his own stay at the hotel two days prior on May 13. Mr. Khosh submitted that the room key was given to him by a woman named Alyssa. At the hotel front desk, Mr. Khosh failed to provide a room number and instead asked that hotel staff identify the room number and make him a new key. Following this exchange, Mr. Khosh left the front desk and returned

to the hotel's elevator. Hotel staff called the non-emergency police line to report Mr. Khosh as a trespasser.

Meanwhile, Mr. Khosh returned to room 410. This time, S.S. opened the door without the security chain, believing her husband had returned from the lobby. Mr. Khosh forced his way inside, overpowering S.S.'s attempts to close the door. S.S. retreated to the back of the room and asked Mr. Khosh to leave, then attempted to flee the room, but was unable to open the door quickly enough. Mr. Khosh grabbed her from behind, pulled her toward the bed, and held her face-down with her hands above her head. S.S. had recently broken her wrist and feared that Mr. Khosh would refracture it.

Mr. Khosh pulled up her nightgown and digitally penetrated her vagina. S.S. was uncertain due to her position whether he attempted to use his penis. Mr. Khosh then suddenly released her, got up, and left the room. According to S.S., Mr. Khosh did not speak the entire time he was in the room.

Mr. Khosh proffered a different sequence of events. He alleged that on the evening prior to the incident at issue, he met a woman named Alyssa at a bowling alley who gave him her number written on a napkin and her room key at the Hilton Garden Inn. He lost Alyssa's number and instead went to the hotel to look for her. He believed her room number was either 401 or 410. After his first interaction with S.S. accompanied by a hotel employee and his attempt to ask the front desk to identify the room key, Mr. Khosh alleged that he returned to room 410 to ask S.S. about Alyssa. According to Mr. Khosh, when he returned to room 410, S.S. "ushered [him] in," then lost her balance while backing away from the door, at which point he touched her only to break her fall. He then "noticed that

Alyssa was not in the room” and asked S.S. whether she had Alyssa’s number. S.S. allegedly responded that she did not know an Alyssa and “had a very uncomfortable look on her face.” At that point, Mr. Khosh alleged, he “promptly left.”

After Mr. Khosh left her room, S.S. promptly reported the assault. Police had already arrived at the hotel in response to the report of a trespasser. They recovered a baguette belonging to Mr. Khosh on the desk in room 410. A short while later, an off-duty police officer who was familiar with Mr. Khosh spotted him at a Cava restaurant near the hotel, followed him, and placed him under arrest. S.S. underwent a forensic examination that included swabs of her vagina, cervix, outer genitalia, and buttocks to detect DNA samples which were sent for analysis. The forensic examination report indicated S.S. had vaginal injuries consistent with penetrative trauma.

Counsel first appeared on Mr. Khosh’s behalf on June 16, 2022, placing the Hicks date at December 13, 2022. Trial was originally scheduled for November 29. Shortly before trial, on November 18, the State learned that the DNA analysis would be delayed by ninety days and filed a motion for continuance.⁴ On November 22, the circuit court judge presided over a hearing on the State’s motion and made a recommendation to the circuit court administrative judge, who then granted the postponement and rescheduled the trial for March 27, 2023.

In February 2023, the State requested a status hearing based on a number of letters Mr. Khosh had authored during October and November of the previous year. The letters

⁴ Mr. Khosh’s opposition to the motion was marked deficient per Maryland Rule 20-203(d).

were addressed to, among others, the prosecutor in his own case, and the President of the United States, and detailed a government conspiracy Mr. Khosh believed was affecting the handling of his case. Following a hearing before the circuit court judge, the Maryland Department of Health committed Mr. Khosh for examination to determine his competency to stand trial. The Department of Health issued a report finding Mr. Khosh incompetent to stand trial on March 5, 2023, and the court declared Mr. Khosh incompetent to stand trial on March 9. Mr. Khosh received another psychiatric evaluation to determine competency on June 9, and on June 14 the examining psychologist reported that Mr. Khosh should be found competent to stand trial. On June 21, 2023, the court held a status hearing and declared Mr. Khosh competent to stand trial. A new trial date was scheduled for February 12, 2024.

At trial, the judge gave the following jury instructions, in relevant part, as to the principal offense:

[THE COURT]: Sexual offences, first-degree rape. The defendant is charged with the crime of first-degree rape. In order to convict the defendant, the State must prove all the elements of forcible second-degree rape, and also must prove that the defendant committed the offense in connection with a burglary in the first, second, or third degree.

Forcible second-degree rape. The defendant is charged with a crime of forcible second-degree rape. In order to convict the defendant of forcible second-degree rape, the State must prove that the defendant engaged in a sexual act with [the victim] by force or the threat of force without the consent of [the victim].

Vaginal intercourse means the penetration of the penis into the vagina. The slightest penetration is sufficient, and emission of semen is not required.

Unlawful penetration means the penetration, however slight, with an object or part of a person's body into the genital opening or anus of another person's

body, if it can be reasonably construed that the act is intended for sexual arousal, or gratification, or for the abuse of either person.

After the State gave its closing argument, the State requested a supplemental jury instruction.

[STATE’S COUNSEL]: We think there needs to be a definition of sexual act. The way the instruction reads right now with the “unlawful penetration” is just a little bit confusing. So, I went back to the statute, which is 3301, which specifically defines 3301.

[...]

[STATE’S COUNSEL]: It just doesn’t connect sexual act with unlawful penetration. Does that make sense? So, sexual act is defined in the statute.

THE COURT: All right, I heard you.

[STATE’S COUNSEL]: I’m sorry. Because sexual act is what the crime is, I’m just worried that jumping down to unlawful penetration doesn’t tell the jury what the sexual act is specifically. So, it almost does. But it doesn’t pick up there. So, I printed out what the statute defines sexual act as. And we would ask that that be read. And we wanted to bring it up before closing.

Defense counsel objected as follows:

[DEFENDANT’S COUNSEL]: Your Honor, the jury has been read the instructions. The State and I both said that we agreed to the instructions. I think this amendment that she’s trying to do is improper. It’s too late.

[...]

THE COURT: I think it would be too late if you had given your — maybe too late if you had already given your close. I just think that I’m concerned that it’s confusing.

[...]

[DEFENDANT’S COUNSEL]: I have to object. Because the jury has been read the jury instructions.

THE COURT: Yes?

[DEFENDANT'S COUNSEL]: So, anything changing the jury instructions now, after the opening statement by the State is prejudicial to both my client, and Your Honor.

THE COURT: Why? Why is it? Tell me why?

[DEFENDANT'S COUNSEL]: Because basically they heard this. Now, you're giving them more information that you didn't give them before. I think [you are] bound, the Court is bound, as well as the State.

THE COURT: But why is it unduly prejudicial?

[DEFENDANT'S COUNSEL]: Because the State — the jury was given the instructions.

THE COURT: Okay.

[DEFENDANT'S COUNSEL]: You read the instructions. The State and I both agreed the instructions were sufficient.

THE COURT: Okay.

[DEFENDANT'S COUNSEL]: Now, the State wants an amendment. I've never heard of an amendment to a jury instruction after the State's closing argument.

THE COURT: Okay.

[DEFENDANT'S COUNSEL]: This is wrong.

THE COURT: Did you not — okay. Well, you're not explaining to me why it's unduly prejudicial. If it had happened after your closing, that might be that you would have an argument. But it would have been preferred —

[DEFENDANT'S COUNSEL]: But you read the jury instructions to the jury. And that's the argument.

THE COURT: All right. Overruled. Can you — I'm just going to add that. I'm going to overrule your objection[.]

The court then issued a supplemental jury instruction as follows:

THE COURT: All right, folks, the instruction that we gave, that I gave you on forcible second-degree rape, there's an addition to that instruction. It'll be included. I'm going to read the addition. It'll be included when I send you the instructions.

I talked to you about unlawful penetration. So, it'll be included before unlawful penetration. And that is because the definition of — because the document references “sexual act,” okay? The instruction.

A sexual act means an act in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus.

And that can reasonably be construed to be for sexual arousal or gratification or for the abuse of either party. All right. That will be, it won't be a separate instruction. It will be included in the forcible second-degree rape instruction.

The jury found Mr. Khosh guilty of first-degree rape, burglary-home invasion, and second-degree assault. On April 29, 2024, the court sentenced Mr. Khosh to life imprisonment with all but fifty years suspended as to first-degree rape, a concurrent twenty-five years with all but fifteen suspended as to home invasion, and a concurrent ten years as to second-degree assault with credit of 716 days for time served and five years of supervised probation with special conditions. This appeal followed.

DISCUSSION

I. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION TO GRANT AN EXCEPTION TO THE HICKS RULE

A. The Parties' Contentions

Mr. Khosh argues that the State failed to show good cause for a continuance past the Hicks date because the DNA evidence in question was not material to the case. In Mr. Khosh's view, DNA evidence was not necessary because the identity of the defendant was not in question and, per counsel's assertion at the postponement hearing, because there was no “penile invasion, and therefore, there should be no DNA.” Mr. Khosh asserts that the administrative judge did not exercise “any discretion” in granting the State's motion,

implying that the judge did not offer a sufficient explanation for his decision. Mr. Khosh thus urges that the proper remedy for violation of the Hicks rule is dismissal.

The State counters that the administrative judge properly found good cause to postpone the trial past the Hicks date to allow for processing of the backlogged DNA evidence. The State notes that the DNA evidence collected in the investigation of this case may well have proven relevant, and that “penile invasion” is not the only way an assailant might leave DNA evidence.

B. Standard of Review

We review the administrative judge’s finding of good cause for postponement of a criminal trial for abuse of discretion. *Tunnell*, 466 Md. at 589 (internal citations omitted). The defendant bears the burden of showing that the administrative judge abused his discretion or that the continuance lacked good cause as a matter of law. *Id.* (citing *State v. Fisher*, 353 Md. 297, 307 (1999)). We assess both the decision to postpone the trial past the Hicks date and the reasonableness of the delay from the scheduled trial date to the new one. *Id.* (citing *Rosenbach*, 314 Md. at 479–80). The administrative judge need not have been aware of the postponement’s relation to the Hicks date when determining good cause or setting a new trial date within a reasonable time. *Id.* (citing *Fisher*, 353 Md. at 305–06). The administrative judge also bears no burden to “explain or delineate the reasons amounting to good cause for a postponement.” *Fisher*, 353 Md. at 307.

C. Analysis

Md. Rule 4-271 provides:

“The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. . . . On motion of a party, or on the court’s initiative, and for good cause shown, the county administrative judge or that judge’s designee may grant a change of a circuit court trial date.”

Md. Rule 4-271(1)(a).⁵

“The requirements established by the statute and rule are often referred to colloquially as the ‘Hicks rule’ and the deadline for commencing trial under those provisions as the ‘Hicks date.’” *Tunnell*, 466 Md. at 571. Postponement of a trial past the Hicks date requires a finding of good cause by the circuit court administrative judge, for both the decision to postpone the trial past the Hicks date and the reasonableness of the delay from the scheduled trial date to the new one. *Id.* at 581 (citing *Rosenbach*, 314 Md. at 479–80). The

⁵ The equivalent CP § 6-103 reads, in relevant part:

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

- (i) the appearance of counsel; or
- (ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.

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

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

- (i) on motion of a party; or
- (ii) on the initiative of the circuit court.”

administrative judge need not be aware of the postponement's relation to the Hicks date when making these determinations. *Id.* (citing *Fisher*, 353 Md. at 305–06).

As our Supreme Court noted in *Tunnell*, the purpose of the Hicks rule is not merely to further the public interest in judicial efficiency, but also “the public interest in the disposition of criminal cases *on the merits*.” 466 Md. at 588. “Dismissal of a serious criminal case, on grounds unrelated to the defendant’s guilt or innocence, is a drastic sanction’ to be used ‘only . . . when . . . needed’ to further the goal of judicial efficiency. A criminal justice system can only call itself a *justice* system if cases are generally decided on their merits. The Hicks rule is not simply a mechanism for efficiently clearing dockets in a statistical sense.” *Id.* (quoting *Farinholt v. State*, 299 Md. 32, 41 (1984)).

The administrative judge has broad discretion to determine what constitutes good cause for an extension past the Hicks date. *See Tunnell*, 466 Md. at 589. “[T]he unavailability of a judge, prosecutor, or courtroom – or general court congestion in a particular jurisdiction” as well as “[a] party’s need to obtain a forensic analysis of evidence, such as a DNA examination” may satisfy the good cause requirement for an extension. *Id.* at 583, 587.

In this case, Mr. Khosh contends that the proper recourse for postponement of his case past the Hicks date is dismissal. He argues that there was no good cause to postpone his trial date because the DNA evidence at issue was immaterial. Mr. Khosh puts forth the mistaken belief that DNA evidence is only relevant in the case of a “penile invasion.” Alternatively, he argues that his identity was not in question and thus DNA evidence was unnecessary. Mr. Khosh’s argument to the circuit court, however, was that he never

touched the victim at all, or that he never touched her inappropriately. Given that DNA evidence can be obtained from other parts of the body, the DNA evidence in question here undoubtedly presented a likelihood of relevancy in Mr. Khosh’s case.

On the matter of timing, the judge initially granted little more than the ninety days the DNA lab needed to analyze the relevant DNA samples, certainly a reasonable and proportionate delay. Mr. Khosh argues, however, that the trial’s delay was such that his mental health deteriorated beyond competency to stand trial. Mr. Khosh was found incompetent to stand trial in February of 2022 and then found competent again in June of the same year.

This echoes the circumstances in *Tunnell*, where the trial date was initially pushed back for DNA analysis and then faced another delay due to issues on the defendant’s side. 466 Md. at 590. At oral argument in this case, counsel for Mr. Khosh misconstrued the holding in *Tunnell* as stating that a delay for processing of DNA evidence did not support an “automatic postponement.” This is not an accurate statement of the holding. Indeed, in *Tunnell*, our Supreme Court held that there was “no question” that additional time to analyze DNA evidence constituted good cause. *Id.* Contrary to counsel’s assertion, the court instead held that the Hicks rule does not rely on a tolling system, but the underlying reasons for the trial’s postponement nonetheless constituted good cause as mandated by the Hicks rule. *Id.* at 570, 593.

As to the length of the delay, the court in *Tunnell* noted that on the originally-rescheduled post-Hicks trial date, the administrative judge’s justification for granting postponement remained apt. *Id.* at 590. At that point, it was the defendant who required

additional time to prepare for trial. *Id.* The defendant-turned-appellant was thus no longer in a position to challenge the length of the delay, as it was for his own benefit. *Id.* Here, similarly, it is unfortunate that Mr. Khosh became incompetent to stand trial shortly before the rescheduled trial date; however, the administrative judge’s reason for granting postponement, additional time to analyze relevant DNA evidence, remained apt at that point. The subsequent delay was not for the State’s benefit but for the benefit of Mr. Khosh.

Thus, we hold that the circuit court properly executed its discretion in finding good cause to postpone Mr. Khosh’s trial past the Hicks date, and that the length of that delay was reasonable and fair to both parties.

II. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION TO ADD A SUPPLEMENTAL JURY INSTRUCTION

A. The Parties’ Contentions

Mr. Khosh argues that providing a supplemental jury instruction following the State’s closing argument improperly influenced the jury and gave the impression that “the court was attempting to aid the State’s case[.]” In Mr. Khosh’s view, the court should not have offered a supplemental instruction unless the jury’s confusion “manifested itself during deliberations.”

The State responds that the circuit court properly exercised its discretion to clarify the definition of “sexual act” as an essential element of the crime for which Mr. Khosh was on trial. In keeping with *State v. Bircher*, where the court held that a supplemental jury instruction generated by the evidence did not prejudice the defendant when the original and supplemented instructions were “so similar that the arguments to be made against guilt are

essentially the same under both theories,” 446 Md. 458 (2016) (internal citations omitted), here, the State notes that this was not a substantial change to the existing jury instructions but a clarification of terminology within the existing statute; thus, the supplemental instruction did not affect defense counsel’s argument or require counsel to change its theory of the case. Finally, the State asserts that the timing of the supplemental instruction created no prejudice against Mr. Khosh because defense counsel was able to give his closing argument after the supplemental instruction had been given, a sentiment echoed by the judge at trial:

THE COURT: [. . .] Well, you’re not explaining to me why it’s unduly prejudicial. If it had happened after your closing, that might be that you would have an argument.

B. Standard of Review

We review the circuit court’s decision to give, or refuse to give, a supplemental jury instruction for abuse of discretion. *Wright v. State*, 474 Md. 467, 482 (2021). “A trial court abuses its discretion if it commits an error of law in giving an instruction.” *Id.* (citing *Harris v. State*, 458 Md. 370, 406 (2018)). The trial court’s determination will not be disturbed absent a showing that its discretion was “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State v. Sayles*, 472 Md. 207, 230 (2021) (quoting *Appraicio v. State*, 431 Md. 42, 51 (2013)).

C. Analysis

Maryland Rule 4-325(a) provides that “[t]he court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate.” A supplemental instruction is generally appropriate

when it is reasonably generated by the evidence and follows the mandate of Rule 4-325(a). *Cruz v. State*, 407 Md. 202, 212 (2009). To determine whether a supplemental jury instruction unfairly prejudiced a defendant, we consider whether defense counsel had an opportunity to make closing remarks with the new instruction in mind, whether the supplemental instruction substantially changed the original instructions, and particularly whether the change was so material as to impair the effectiveness of defense counsel's theory of the case. *See Bircher*, 446 Md. at 472–73 (internal citations omitted).

Here, the court gave a supplemental instruction at the State's request to clarify the definition of a term as defined in the relevant statute. This clarification referred directly to the relevant statute under which Mr. Khosh was already charged and was thus reasonably generated by the evidence as outlined in *Cruz*. 407 Md. at 210–12 (citing *State v. Baby*, 404 Md. 220 (2008), and *Brogden v. State*, 384 Md. 631 (2005)). Notably, this case is distinct from predecessors such as *Bircher* and *Cruz*, where the court gave supplemental instructions in response to jury questions during deliberations, because here, the court gave the supplemental instruction prior to defense counsel's closing argument. Mr. Khosh attempts to argue both that the supplemental instruction should not have been given unless the jury expressed confusion during deliberations and that the timing of the jury instruction was unfairly prejudicial.

First, the timing of the supplemental instruction did not prejudice Mr. Khosh because defense counsel had an opportunity to give his closing argument after the supplemental instruction was given. Where the court in *Bircher* gave supplemental instructions after closing argument and offered the litigants additional time for closing

remarks consistent with the supplemented instructions, 446 Md. at 474–75, here, counsel for Mr. Khosh had not yet given his original closing argument and was thus free to address the supplemental instruction as needed without any additional time. Although defense counsel objected on the matter of timing, he could not articulate why the timing was prejudicial to the defendant. As the judge noted, “If it had happened after your closing, that might be that you would have an argument.” In accordance with Rule 4-325(a), the trial judge exercised discretion to grant a supplemental instruction after closing argument had begun, and responded to defense counsel’s objection as part of that discretionary analysis.

Moreover, this supplemental instruction did not materially change the original instructions, nor did it deprive Mr. Khosh of an opportunity to revise his theory of the case accordingly. Unlike in *Cruz*, where the court held that a supplemental jury instruction on an offense that differed from the sole charged offense prejudiced the defendant by contradicting his theory of the case with no chance to revise his argument, 407 Md. at 204, here, the court did not introduce a new offense or element into the instructions but rather clarified a term within the existing instructions to better mirror the statute on which the instructions are based. As the State points out, Mr. Khosh did not deny that the State was accusing him of sexual misconduct but rather disputed that he had engaged in it. The supplemental instruction merely clarified a term within the original instructions when defense counsel still had an opportunity to make closing remarks.

Thus, we hold that the trial court did not abuse its discretion when it gave a supplemental jury instruction after closing arguments began.

CONCLUSION

We hold that the circuit court properly exercised its discretion in granting a continuance past the Hicks date and in granting a supplemental jury instruction at trial. Accordingly, we affirm.

**JUDGMENT OF THE
CIRCUIT COURT FOR
MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**