Circuit Court for Baltimore County
Case No. C-03-CR-19-003763

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 908

September Term, 2021

DAMILOLA ANIMASHAUN

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Tang,

JJ.

Opinion by Tang, J.

Filed: September 28, 2022

After a bench trial in the Circuit Court for Baltimore County, Damilola Animashaun, appellant, was convicted of second-degree rape, false imprisonment, and second-degree assault. The court sentenced him to 20 years for second-degree rape and ten years for second-degree assault, with all but 18 months suspended in favor of 5 years' supervised probation, consecutive to the first sentence. The false imprisonment count merged with second-degree rape for purposes of sentencing. The sentences also were made consecutive to a sentence appellant was then serving in New York.

Appellant appeals, presenting two issues,[1] which we have rephrased slightly:

I. Did the circuit court err by not dismissing the charges for violation of the speedy trial provisions of the Interstate Agreement on Detainers?

[1] On May 4, 2022, less than ten days before the date that this case was scheduled to be submitted on brief (May 12, 2022), and more than 20 days after the State filed its brief (March 4, 2022), private counsel filed in this Court an entry of appearance on behalf of appellant and a reply brief. Appellant had been represented by the Office of the Public Defender, and his appellate counsel never moved to withdraw from this case. The sole issue raised in the one-page reply brief is that the trial court erred by not granting appellant's motion to discharge his counsel made at his trial.

The State moves to strike the reply brief as untimely under Maryland Rule 8-502(a)(3), which requires that a reply be filed "not later than the earlier of 20 days after the filing of the appellee's brief or ten days before the date of scheduled argument." Though the parties may agree to an extension of the 20-day filing period, no extension was requested here, and, in any event, a reply brief never is permitted to be filed less than 10 days before the date a case is submitted on brief. Md. Rule 8-502(b)(2)(A)(ii). The State also moves to strike on the alternative grounds that the sole issue raised in the reply brief was waived because it was not raised by appellant in his opening brief and he provides no factual or legal basis for his contention of error. *See, e.g.*, Md. Rule 8-504(a)(4), (6) (brief must contain a statement of facts "material to a determination of the questions presented" and "[a]rgument in support of the party's position on each issue"); *Jones v. State*, 379 Md. 704, 713 (2004) ("an appellate court ordinarily will not consider an issue raised for the first time in a reply brief."). We exercise our discretion to grant the motion to strike the reply brief for all those reasons.

II. Should the circuit court have merged appellant's conviction for second-degree assault with his conviction for second-degree rape?

We answer the first question in the negative and the second question in the affirmative. For the reasons set forth below, we shall vacate the sentence for second-degree assault, but otherwise affirm the judgment.

BACKGROUND

On the evening of April 5, 2010, as B.D.,[2] then age 19, walked back to her apartment building in Pikesville, a man she did not know came up behind her and called out to her, trying to get her attention. She ignored him and walked into her building. As she began to walk upstairs to her apartment, the man, who had followed her inside, grabbed her by the right wrist. He dragged her down a flight of stairs into the laundry room. Inside the laundry room, the man "slammed [her] to the floor" on her back. He held her wrists together in front of her chest and pulled her shorts and underwear down. He kissed her on the neck. He then inserted his penis inside her vagina. After he "was done, he ran off."

B.D. called her friend, S.W., and told her what had happened. S.W.'s brother-in-law drove B.D. to the hospital, where officers from the Baltimore County Police Department responded.

[2] Under Rule 8-125, which took effect on April 1, 2022, this Court shall not identify the victim of a crime, except by his or her initials, if the crime is of the type that would require the defendant to register as sex offender if convicted. Md. Rule 8-125(a)(2)-(b)(1). The Rule further provides that this Court shall not include other information from which the victim could be identified. Md. Rule 8-125(b)(2). Consistent with this Rule, we identify the victim and her friend by their initials.

B.D. underwent a sexual assault forensic examination ("SAFE"), which was conducted by a nurse. The nurse observed injuries to B.D.'s labia, abrasions to her cervix, bruising above her right breast, and an abrasion above her left ankle. The nurse collected physical evidence for DNA analysis and other testing, including a swab from B.D.'s neck that was positive for the presence of saliva, a vaginal/cervical swab that was positive for the presence of semen, and B.D.'s underwear, which had stains on it that also were positive for the presence of semen. A DNA profile for an unknown, primary male contributor, developed from the saliva sample, was entered into the CODIS database.

Over a year later, in May 2011, officials from the State of New York notified Baltimore County Police detectives that the DNA sample matched appellant, who was then in custody in New York charged with an unrelated rape. In July 2011, the detectives traveled to New York with a warrant to obtain a DNA sample from appellant. The DNA analysis determined that appellant's DNA was consistent with the primary male contributor profile obtained from the swab taken from B.D.'s neck. Subsequent testing of a cutting from B.D.'s underwear also yielded a DNA profile that matched appellant's known sample.

On August 10, 2011, the State charged appellant in the District Court of Maryland for Baltimore County with first-degree rape, second-degree sexual offense, and second-degree assault, and an arrest warrant issued. As we shall explain later in this opinion, because appellant was incarcerated in New York and because neither he nor the State acted to seek disposition of the warrant, it remained lodged as a detainer against him for nearly nine years. In September 2019, after appellant requested final disposition of the charges

under the Interstate Agreement on Detainers, he was transported to Maryland. On October 7, 2019, he was indicted in the circuit court on three counts: second-degree rape, false imprisonment, and second-degree assault. Those charges ultimately were tried to the court over two days in May 2021. The court convicted him on all three counts. This timely appeal followed.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I. Interstate Agreement on Detainers

Appellant contends that the circuit court erred by denying his motion to dismiss the charges against him for violation of the speedy trial protections of the Interstate Agreement on Detainers ("IAD"). Before turning to his specific argument, we offer some background on the IAD.

A. Overview of the IAD

The IAD is a "congressionally-sanctioned compact among the states designed to facilitate the prompt disposition of a detainer lodged by one state against a person incarcerated in another state." *Aleman v. State*, 469 Md. 397, 402 (2020). Maryland is one of 48 states, along with the District of Columbia and the federal government, to adopt the IAD. *State v. Pair*, 416 Md. 157, 160 (2010). The IAD comprises nine articles, which are codified in Maryland at Md. Code Ann., Corr. Servs. §§ 8-401 through 8-417. *See Pair*, 416 Md. at 160-61. Because the IAD was authorized by an act of Congress, it qualifies as a federal law. *Aleman*, 469 Md. at 406.

"[T]he purpose of the IAD is to facilitate speedy disposition of charges underlying detainers." *Pair*, 416 Md. at 162. To accomplish this purpose the IAD facilitates the "temporary transfer of [a] prisoner from the state of incarceration to the state in which charges are pending[.]" *Aleman*, 469 Md. at 402. "[B]y its express terms, the IAD 'shall be liberally construed so as to effectuate its purposes.'" *Pair*, 416 Md. at 169 (quoting Corr. Servs. § 8-411).

The IAD is triggered when "a state in which there are untried charges pending against an individual imprisoned in another state lodges a detainer with the state in which the individual is imprisoned." *Aleman*, 469 Md. at 407. The state with the pending charges is the "receiving state," and the state in which the individual is imprisoned is the "sending state." Corr. Servs. § 8-404(b), (c).

Article IV of the IAD, codified at Corr. Servs. § 8-406, "enables a participating State to gain custody of a prisoner incarcerated in another jurisdiction, in order to try him on criminal charges," and Article III, codified at Corr. Servs. § 8-405, "gives a prisoner incarcerated in one State the right to demand the speedy disposition of any untried indictment, information or complaint that is the basis of a detainer lodged against him by another State." *Pair*, 416 Md. at 162 (cleaned up).

Under Article III, an incarcerated person initiates final disposition of pending charges by "fil[ing] a request for IAD relief with the [official in charge of his or her institution], who must forward the request to the appropriate authorities in the receiving state." *Id.*; *see* Corr. Servs. § 8-405(b). The "notice of an inmate's invocation of his Article

III rights must be sent to the 'appropriate prosecuting official and court' by certified or registered mail, return receipt requested." *State v. Coale*, 250 Md. App. 1, 9 (2021) (quoting Corr. Servs. § 8-405(b)). The request must be "accompanied by a certificate of the appropriate official having custody of the prisoner," which states "the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner." Corr. Servs. § 8-405(a). By making a request under Article III, the prisoner waives extradition. Corr. Servs. § 8-405(e).

Alternatively, the receiving state may initiate the disposition of charges against an incarcerated person by filing "a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated[.]" Corr. Servs. § 8-406(a).

The IAD imposes obligations on the receiving state including, as relevant here, speedy trial deadlines. If a request for final disposition is made by a prisoner, he or she "shall be brought to trial within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of the prisoner's imprisonment and the prisoner's request for a final disposition[.]" Corr. Servs. § 8-405(a). If, on the other hand, a request for temporary custody is initiated by the receiving state, trial on the charges shall commence "within 120 days of the arrival of the prisoner in the receiving state[.]" Corr. Servs. § 8-406(c). In

either instance, the court presiding over the matter may grant "any necessary or reasonable continuance" of the deadline "for good cause shown in open court, the prisoner or the prisoner's counsel being present." Corr. Servs. §§ 8-405(a), 8-406(c). The deadlines also are tolled if the prisoner is unable to stand trial. Corr. Servs. § 8-408. "[I]f the receiving state otherwise does not bring the prisoner to trial on the charges underlying the detainer within the requisite time period, the receiving state is to dismiss those charges with prejudice." *Aleman*, 469 Md. at 411; *see* Corr. Servs. §§ 8-405(d), 8-406(e).

When the General Assembly adopted the IAD in 1965, it also enacted supplemental statutes. *Coale*, 250 Md. App. at 10. As pertinent, Corr. Servs. § 8-416 states that an inmate's written invocation of his right to speedy disposition "may not be deemed to have been delivered . . . until the notice or notification is actually received by the appropriate court" and the State's Attorney's office.

B. Chronology of Relevant Events

On March 28, 2011, a little less than a year after B.D. was raped, appellant was arrested in New York, charged with an unrelated rape, and detained without bond pending trial.

About five months later, on August 10, 2011, after DNA testing linked appellant to B.D.'s case, the District Court of Maryland for Baltimore County issued an arrest warrant for him. That warrant was lodged as a detainer against him in New York.

In 2013, appellant was convicted of first-degree rape in the New York case and sentenced to serve 14 years.

On or about May 2, 2019, appellant signed a handwritten motion entitled "Affidavit in Support of Motion to Dismiss Arrest Warrant, Charges, and All Related Accusatory Instruments" which was addressed to "the People of the State of New York" and "the People of the State of Maryland." His primary argument was that the first-degree rape charge must be dismissed because there was no allegation that a dangerous weapon was used to carry out the rape or evidence that the victim was threatened or injured. He further argued that the second-degree assault and second-degree sexual offense charges were "time barred" because he was not prosecuted within five years after the crimes occurred and/or the arrest warrant issued. Appellant signed an affidavit of service relative to this motion. The affidavit dated May 2, 2019 states that he mailed a "copy of [] the Notice of Motion to Dismiss, the affidavit in support and attachment" to the District Court of Maryland for Baltimore County and the State's Attorney's Office in Baltimore County. He sent an additional "notice" letter to the State's Attorney's Office dated May 27, 2019, stating that he mailed a copy of the "notice of [M]otion to [D]ismiss, affidavit in support and attachments" to the State's Attorney's Office, and that he had previously sent the originals to the District Court.

On July 12, 2019, after being notified of the warrant, appellant invoked his rights under the IAD by way of the "INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS" ("Form II"), requesting final disposition of the Maryland charges.[3] Form

[3] The National Association of Extradition Officials developed forms to implement the IAD. *Aleman*, 469 Md. at 412.

II was accompanied by a "CERTIFICATE OF INMATE STATUS" ("Form III") completed by New York correctional personnel that detailed appellant's term of commitment, time served, time remaining, good time earned, date of parole eligibility, and maximum expiration date. It also was accompanied by an "OFFER TO DELIVER TEMPORARY CUSTODY" ("Form IV"), which was addressed to the Baltimore County State's Attorney and advised that New York, as the sending state, was willing to deliver temporary custody of appellant to Maryland, the receiving state, pursuant to his request for final disposition. Forms II, III, and IV were mailed to the Office of the State's Attorney for Baltimore County and the District Court of Maryland for Baltimore County by the correctional facility.

On September 12, 2019, appellant was transported to Maryland.

On October 7, 2019, the State filed an indictment charging appellant in the circuit court with second-degree rape, false imprisonment, and second-degree assault. The Office of the Public Defender entered its appearance on behalf of appellant on November 6, 2019.

Trial was scheduled to commence on December 18, 2019. On that date, the parties appeared and jointly requested a postponement to allow defense counsel additional time to prepare for trial.[4] For good cause shown, the court granted the postponement until March 24, 2020. That trial date later was postponed due to COVID-19 emergency measures.

[4] A transcript of this hearing does not appear in the record, but a hearing sheet reflects that the postponement request was made jointly. In any event, appellant does not challenge on appeal the court's determination that the postponement request was granted for good cause.

On August 6, 2020, the court held a hearing during which appellant's attorney articulated arguments raised by appellant in *pro se* motions to dismiss under the IAD. He argued that the 180-day period[5] to try him began running in August 2011, when the District Court issued the arrest warrant. Alternatively, he argued that the 180-day period began to run on July 12, 2019 (expiring in January 2020). He maintained that the continuance of the original trial date of December 18, 2019 was not granted for good cause and, consequently, dismissal of the charges against him was warranted.

The court rejected both arguments, first concluding that the August 2011 warrant was lodged as a detainer, but that neither appellant nor the State took any action to dispose of it until July 2019, which triggered the speedy trial provision of the IAD. Second, the court ruled that the December 2019 trial date was continued for good cause based upon the joint request of the prosecutor and defense counsel. For those reasons, it denied the motion to dismiss under the IAD.

On January 26, 2021, appellant filed a *pro se* motion to dismiss under the IAD based upon "newly discovered information." He alleged that his handwritten motion to dismiss dated May 2, 2019 was a "request per Article 3 of the IAD" that started the 180-day limitation.

At a hearing on March 2, 2021, defense counsel presented this argument as a "slight tweak" of his earlier arguments for dismissal of the charges under the IAD. He argued that

[5] Defense counsel references the 120-day period during his argument and the prosecutor echoed that in his argument. The parties now agree, however, that the 180-day period under the IAD governs in this case.

the 180-day deadline already had passed before the original trial date of December 18, 2019 because the actual date that appellant invoked his right to final disposition of the charges was May 27, 2019.

The State acknowledged having received correspondence from appellant requesting dismissal of the charges against him but argued that the letter did not trigger the speedy trial provision because appellant was just "saying hey, what are you guys going to do?"[6] The court "completely reject[ed] the notion that the time be[gan] to run from when he sen[t] a letter" and denied the motion to dismiss.

C. The Parties' Contentions

In this appeal, appellant argues that he invoked his right to final disposition of the charges more than 180 days before his original trial date of December 18, 2019. Thus, he maintains that the joint postponement request granted on that date (as well as subsequent administrative postponements due to the COVID-19 emergency measures) was ineffective and dismissal of the charges was warranted.

The State responds that appellant did not invoke his right to final disposition of the charges until July 12, 2019, which was less than 180 days before the original trial date on December 18, 2019. It asserts that an earlier motion to dismiss mailed by appellant to the Office of the State's Attorney for Baltimore County and the District Court of Maryland for

[6] At the hearing, the prosecutor still was operating under the mistaken assumption that the 120-day period governed and, consequently, she argued that that period did not begin until appellant was transported to Maryland. As noted earlier, there is no dispute on appeal that the 180-day timeline governs.

Baltimore County did not comply with numerous provisions of the IAD and was ineffective to trigger the 180-day speedy trial provision.

Because the propriety of the denial of appellant's motion to dismiss the charges turns upon whether the court correctly interpreted and applied the IAD to the facts before it and because those facts are not disputed, we must decide if the court was legally correct in its interpretation of the law. *Pair*, 416 Md. at 168 (citing *Schisler v. State*, 394 Md. 519, 535 (2006)). "In doing so, we must examine the provisions of the IAD with the goal of ascertaining the legislative intent, by resorting first to the plain language of the law." *Id.* (citing *Thanner v. Balt. Cnty.*, 414 Md. 265, 277 (2010)). When the language "is clear and unambiguous, we need not look beyond [its] provisions and our analysis ends." *Barbre v. Pope*, 402 Md. 157, 173 (2007). But when the language is subject to more than one reasonable interpretation, "it is ambiguous, and we resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose." *Id.* (citing *Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399, 419-20 (2007)).

D. Analysis

Because there is no dispute that appellant requested final disposition of the Maryland charges *before* he was transported to Maryland in September 2019, the 180-day speedy trial provision of the IAD governs, not the 120-day provision. *Compare* Corr. Servs. § 8-405(a) (prisoner shall be brought to trial within 180 days "after the prisoner shall have caused to be delivered" the information in Forms II and III), *with* Corr. Servs. § 8-406(c) (if receiving state requests temporary custody, "trial shall be commenced within

120 days of the arrival of the prisoner in the receiving state"). The issue before us concerns when the 180-day clock began to run.

Appellant no longer advances the position that the postponement of his original trial date on December 18, 2019 was not for good cause, and he likewise does not contest that the subsequent postponements during the COVID-19 emergency closures also were for good cause. Consequently, we must determine whether appellant "caused to be delivered" a request for final disposition of the charges more than 180 days before December 18, 2019. Corr. Servs. § 8-405(a).

Appellant contends that his motion to dismiss the charges, which he mailed no later than May 27, 2019, triggered the 180-day clock. He maintains that the "prisoner mailbox rule" should apply, but, in any event, asserts that the State must have received his motion more than 180 days before the continuance of his original trial date (no later than June 20, 2019). He emphasizes that the IAD is to be construed liberally to achieve its purposes.

The State responds that the Supreme Court has rejected the application of the prisoner mailbox rule to the speedy trial provisions of the IAD, *see Fex v. Michigan*, 507 U.S. 43, 52 (1993), and that Corr. Servs. § 8-416 likewise prohibits its application. Assuming that the State's Attorney and the District Court received appellant's motion by June 20, 2019, however, the State maintains that it did not trigger the 180-day clock because it was not a request for final disposition of the charges and because it did not otherwise comply with Corr. Servs. § 8-405(a). We agree that appellant's May 2019 correspondence did not technically or substantively comply with the IAD.

The IAD specifies that a request for final disposition must provide authorities in the receiving state with notice of the place of the prisoner's imprisonment and be

> by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

Corr. Servs. § 8-405(a). The prisoner must transmit his or her notice to the correctional authorities in the sending state and those authorities, not the prisoner, are required to forward it, along with the accompanying certificate, to the appropriate officials in the receiving state. This Court has explained that the notice requirements are "mandatory and not directory" and that the certificate requirement, in particular, permits the State's Attorney to assess whether to bring the accused to trial on the pending charges given the duration of the sentence he or she is serving in the sending state. *Hines v. State*, 58 Md. App. 637, 649-50 (1984) (quoting *Isaacs v. State*, 31 Md. App. 604, 611 (1976)).

Appellant's May 2019 motion was not sent by prison officials in New York and, significantly, did not include the requisite certificate notifying the State's Attorney about the details of his sentence. As this Court has reasoned, "[t]he phrase 'liberally construed' does not . . . mean that courts are free to bend the legislation out of shape or to remold it to some other form." *Isaacs*, 31 Md. App. at 611. Because appellant did not comply with the mandatory notice provisions of the IAD in May 2019, the 180-day period to try him under that law was not triggered. *See Hines*, 58 Md. App. at 649-50 (prisoner must "make a request for final disposition in the appropriate manner" to invoke the benefits of the act).

Even if this technical deficiency was excusable, which it is not, we would nevertheless affirm the denial of the motion to dismiss because appellant's motion cannot reasonably be understood to invoke his right to a final disposition of the charges against him under the IAD. In *Hines*, this Court reasoned that a "general motion for a speedy trial" filed by the defendant was "not the same as a request for disposition under the IAD." 58 Md. App. at 651. Here, appellant did not request a speedy trial or final disposition of the charges, but instead, moved to dismiss the charges against him. His motion was largely addressed to the propriety of first-degree rape charge. Though appellant stated that the sexual offense and assault charges were "time barred," his argument was not grounded in the IAD.

Our recent decision in *State v. Coale*, 250 Md. App. 1 (2021) is not to the contrary. There we emphasized that actual notice of a prisoner's invocation of his rights under Article III of the IAD is what triggers the 180-day deadline, not "exact compliance" with the statute. *Id*. at 39-40. Our ultimate holding in *Coale* was that the 180-day timeline did not begin to run until the prosecutor and the court in the relevant jurisdiction were on actual notice of the invocation of the defendant's rights under the IAD. *Id*. In this case, for the reasons explained, appellant's May 2019 correspondence did not effect actual notice of his invocation of his rights under Article III of the IAD. His July 12, 2019 correspondence did. For all those reasons, the circuit court did not legally err by denying appellant's motion to dismiss the charges for violation of the IAD.

II. Merger

The trial court found appellant guilty of second-degree assault based upon a battery variety assault that preceded and was distinct from the unconsented touching that was incident to the rape and the false imprisonment convictions. At sentencing, the court ruled that the false imprisonment conviction merged but that the second-degree assault conviction did not. It reasoned that the assault was "the grabbing of the victim as she is going into her [apartment building]."

Appellant contends that the "factual predicate" for his second-degree assault conviction was "part and parcel to the factual predicate for second-degree rape," necessitating merger. Alternatively, he contends that the assault was necessary to the false imprisonment, requiring merger with that conviction, which properly was merged with the rape conviction for sentencing purposes.

The State concedes that appellant's separate sentence for second-degree assault should be vacated because it should have been merged with the sentence for second-degree rape.[7] Relying on *Thompson v. State*, 119 Md. App. 606 (1998), the State concludes that appellant's "indictment must be construed to charge him only with the assaultive conduct that was part and parcel of the second-degree rape and false imprisonment. Thus, when

[7] In an "Erratum" filed on August 23, 2022, after the date of submission, the State expressed its desire to "withdraw Part II of the Argument section of its brief," in which it previously argued that the court correctly declined to merge for sentencing appellant's conviction for second-degree assault with his convictions for second-degree rape and false imprisonment.

[appellant] was convicted on all counts, merger of the second-degree assault count as a lesser-included offense was preordained by the charging document."

In *Thompson*, this Court stated that "the question of whether certain counts charge crimes that are lesser included offenses within other counts or, on the other hand, charge unrelated criminal conduct, can frequently be resolved within the four corners of the indictment." *Id.* at 617. Although the "evidence [might be] legally sufficient to permit a finding of fact that a second assault occurred that was not a part of the major crime[,]" the "pertinent question is not whether more than one assault was conceivably proved. It is whether more than one assault was actually charged and, if not, then which of several possible assaults was the only assault charged." *Id*. at 608-09. The Court held

> that in a multi-count indictment where a count qualifies in all regards as a lesser included offense within a greater inclusive offense which is also charged, that count will be *presumptively deemed* to be a lesser included offense *unless* the charging document clearly indicates that such is not the case and that other unrelated criminal conduct is intended to be the subject of the count.

Id. at 621-22 (emphasis added.) Here, appellant's indictment was structured in a descending ladder format as follows: (1) the second-degree rape count, (2) the false imprisonment count, and (3) the second-degree assault count. The State acknowledges that the language of the second-degree assault count stated that on or about the same date specified in the two higher counts, appellant "did assault [B.D.] in the second degree" without a clear indication that it was based on other unrelated criminal conduct. The State concedes that appellant's "indictment is at least ambiguous as to whether the assault count charged only the assaultive conduct that was inherent in the greater inclusive counts of

false imprisonment and second-degree rape, or also encompassed a separate assault. And under the *Thompson* analysis, that ambiguity must be resolved in [appellant's] favor. Therefore, merger of [appellant's] sentence for second-degree assault with his sentence for second-degree rape is required."

As mentioned, the court sentenced appellant to ten years, suspending all but 18 months, for the second-degree assault conviction and made that sentence consecutive to the sentence imposed for second-degree rape. For the reasons set forth above, we shall vacate appellant's sentence for second-degree assault.

SENTENCE FOR SECOND-DEGREE ASSAULT VACATED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT, ONE-HALF BY BALTIMORE COUNTY.