Circuit Court for Baltimore County
Case No. C-03-CR-19-004969

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1740

September Term, 2021

ROYAL QUINN

v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: October 28, 2022

Royal Quinn ("Quinn") appeals his convictions in the Circuit Court for Baltimore County of first degree rape and related offenses. Quinn filed a motion to dismiss in which he alleged a violation of *State v. Hicks*.[1] He also moved to suppress evidence obtained from his residence, vehicle, and cell phone. The circuit court denied Quinn's motion to dismiss, finding good cause to delay Quinn's trial due to the COVID-19 pandemic. The circuit court also denied Quinn's motions to suppress, concluding the evidence was seized pursuant to a valid search warrant. A jury found Quinn guilty of first degree rape, attempted first degree rape, and kidnapping. Quinn was sentenced to life without parole for first degree rape, a concurrent life sentence for attempted first degree rape, and the kidnapping conviction was merged. On appeal, Quinn challenges the circuit court's denial of his motion to dismiss and his motions to suppress and argues he received ineffective assistance of counsel. For the reasons explained below, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Quinn presents the following questions for our review:[2]

[1] The "*Hicks*" Rule is codified in Section 6-103 of the Criminal Procedure Article of the Maryland Code and Maryland Rule 4-271. In *State v. Hicks*, 285 Md. 310 (1979), the Court of Appeals held that a criminal defendant must be brought to trial within 180 days after the earlier of the appearance of counsel, or first appearance of the defendant before the circuit court, unless good cause is shown. *Id.* at 315–16. A *Hicks* violation results in the dismissal of the charges with prejudice. *Id.* at 318.

[2] Rephrased from:

I. Did the trial court err in denying Appellant's motion to dismiss for violation of Md. Rule 4-271?
II. Did the trial court err in denying Appellant's motion to suppress the fruits of the search warrant for the residence . . .?
III. Did the trial court err in denying Appellant's motion to suppress the fruits of the search of the phone found in the black Nissan Maxima?

I. Did the circuit court err in denying the motion to dismiss?

II. Did the circuit court err in declining to suppress evidence obtained from Quinn's residence and vehicle?

III. Did the circuit court err in declining to suppress evidence obtained from the search of the Samsung cell phone?

IV. Whether Quinn's ineffective assistance of counsel claim was properly brought on direct appeal?

FACTUAL AND PROCEDURAL BACKGROUND

Prior to trial, Quinn filed motions to dismiss for alleged *Hicks* violations and motions to suppress evidence obtained from the search of his residence, vehicle, and phone. These motions, argued in the circuit court on October 23, 2020, were denied.[3] The case subsequently proceeded to a four-day jury trial, which began on August 30, 2021. The following facts are drawn from the evidence presented at Quinn's trial.

On the morning of December 2, 2019, then 11-year-old A.[4] was assaulted and raped while on her way to school. A. was walking past Norwood Elementary School ("Norwood") on her way to a bus at Holabird Middle School, which would take her to Dundalk Middle School, where she was in the sixth grade. As A. was walking to Holabird Middle School, she noticed a car parked near her. As A. continued walking towards the

IV. Was the evidence sufficient to support Appellant's convictions?

[3] Quinn renewed his arguments regarding the motion to dismiss at subsequent hearings on November 9, 2020, December 8, 2020, and August 5, 2021. He also renewed his motion to suppress at the hearings on November 9, 2020, and December 8, 2020.

[4] To protect the privacy of the victim, we will refer to her as "A." Neither the victim's first name nor surname begins with this letter.

school, a man grabbed her from behind, pulled her pants and underwear down to her ankles and told her to "shut the [] up." A. testified that the man hit her about three times and busted her lip open. A. further testified that the man touched her "private parts" with his hand and inserted his finger in her "private parts." A. stated that the man was "trying to rape [her]."

As the man was on top of A., she was screaming and trying to defend herself. She told the man to "let [her] go or else [she would] call the police." When the man first approached her, A. had a cell phone in her back pocket. Although she did not feel when the man removed her phone from her back pocket, A. could not call the police because the man "threw the phone," and she saw it on the ground a distance from her. A. was not sure exactly how long the man was on top of her, but at some point, she was able to pull up her pants and go get help.[5] A. came across C.A., a woman who was taking her nieces to school, and told her a black man tried to rape her and asked that she be taken to her dad.

At trial, A. described her attacker as a tall, dark skinned black man with a beard who looked like he was about 25 years old. On direct examination, when questioned about whether she would recognize the man if she saw him again, A. testified, "I really don't know but I think so." A. was also asked if she saw the man in the courtroom, to which she responded, "I don't know."

C.A. testified that on the date of the incident, she was dropping off her nieces at their respective schools. After she dropped off one of her nieces at Norwood, her other

[5] On direct examination, A. was asked, "Did you see [the man] after he jumped up . . .?" Although A. did not explicitly testify that the attack stopped, it is implied from her testimony that at some point, the man stopped and jumped up and it was then that A. went to get help.

niece drew her attention to A. who was crying. According to C.A., A.'s clothes were dirty and her face was bruised. A. told C.A. that a black man placed his finger in her private parts, tried to rape her, and stole her cell phone. A. asked C.A. to take her to her father.

A.'s father, B.,[6] testified that, on the morning of the incident, he received a phone call from C.A. who told him that his daughter had been raped. When C.A. brought A. home, B. observed that she had been "hit in her eye, and in her mouth." B. saw that A.'s clothes were dirty, her pants were undone, and she was emotionally "destroyed." B. then took A. back to Norwood where the police were called. B. also testified that A. had an iPhone, but the cell phone only had service when connected to the internet.

Upon returning to the school, A. spoke with a school resource officer and told him that a man attacked and physically assaulted her while she was walking behind Norwood. The resource officer saw that A. was crying and upset and her clothes were disheveled with grass stains. The resource officer also observed A.'s right eye was bruised, and the lower part of her right lip was starting to swell. A. told the resource officer that a man ran up behind her, tackled her, and pulled her into a low-lying area. A. further indicated the man struggled with her for several minutes, was able to get her pants down below her knees, and digitally penetrated her while she was on the ground. A. described her attacker as a 25 to 30-year-old black male, who was about six feet tall, 160 pounds, and was wearing a black sweatshirt, black knit cap, black jeans, and black shoes. A. also indicated the man

[6] To further protect the privacy of the victim, we will refer to her father as "B." Neither his first name nor surname begins with this letter.

took her iPhone 7 from her.[7]

After speaking with A., the resource officer went to the administrator's office to review security camera footage from the incident location. The video depicted the incident and suspect as described by A., and it showed a black vehicle in the area. The resource officer relayed the information obtained from the surveillance video and A. to investigating officers. A. was then taken to the Crimes Against Children Unit to be interviewed by detectives before being taken to Greater Baltimore Medical Center ("GBMC") for a SAFE[8] exam. The resource officer did not know whether A. identified Quinn as her assailant.

A forensic nurse examiner with GBMC performed a SAFE exam on A. and documented her injuries. The nurse confirmed A. had a bruise, swelling and petechia[9] under her right eye, and abrasions and bruising on her lower lip. A. also had scratches on her upper right thigh, a scratch on her upper left thigh, dirt on her left knee, and broken fingernails. Mud and debris were found in A.'s labia majora, and there was erythema[10] on

[7] The resource officer tried to have the communications center "ping" A.'s phone so they could see where it was. However, the phone only worked when connected to Wi-Fi, so unless it was connected to Wi-Fi at the time, there was no way to locate it.

[8] A Sexual Assault Forensic Examination ("SAFE") is medical-forensic evaluation performed by specialized nurses to document and collect forensic evidence to be submitted to the Baltimore County Police Department Crime Lab. *See SAFE Sexual Assault Forensic Examination Program at GBMC*, GBMC Healthcare, https://www.gbmc.org/safe.

[9] In her testimony, the nurse explained that petechia refers to broken blood vessels just under the skin which result from injury.

[10] The nurse explained erythema is superficial redness as a result of irritation or injury.

A.'s labia minora.[11] Debris was also found on the sheet that A. was sitting on during the exam. A.'s injuries were photographed, and the following evidence was collected from A.: swabs from her mouth, underneath her fingernails, each hand, and genital area; the debris found on her genital area and the sheet; and the clothing A. was wearing when she came to the hospital. A. told the nurse that she was digitally penetrated in her vagina and that she had been raped.

A detective from the Crimes Against Children Unit investigated the incident and directed that A. be brought to the Child Advocacy Center for an interview. The interview was conducted by a social worker. The detective observed A. in person and reviewed the recorded interview. He also requested that A.'s clothing be collected. The jeans and sweatshirt A. was wearing at the time of the incident were wet and muddy. On the same date as the incident, the detective went to Norwood, where he observed the area around the school was wet and muddy. A. indicated to the detective that her assailant appeared to be Mexican, "having a complexion that is not light and not dark," with a beard, and was wearing a black sweatshirt, black pants, and a black hat.

Various members of the Baltimore County Police Department collected surveillance videos from the incident area[12] and were able to identify the suspect vehicle as a black Nissan Maxima with distinct chrome trim and alloy wheels. The surveillance videos

[11] The nurse testified these findings were significant, as they correlated with what A. had told her with respect to how the incident happened.

[12] Surveillance videos were collected from various locations, including 1601 Rita Road, 1809 Snyder Avenue, 1977 Snyder Avenue, Jimmy's Seafood on Holabird Avenue, the I-95 southbound toll booth and a traffic camera referred to as City Wide.

collected from the incident scene showed A. on her walk to school holding her cell phone. The videos also depicted the suspect vehicle slow down, park outside of Norwood and showed the driver exit the vehicle and head towards the field, which is the same direction in which A. was walking. The video then showed the suspect running in A.'s direction on the path before grabbing her in a "bear hug," picking her up, carrying her and then falling down on her and remaining on top of her. Nothing further appeared in the video for just over five minutes until the suspect can be seen running back from the field behind Norwood, where he pulled up his pants. He picked something up off the ground, got into the suspect vehicle, and drove it away. A. pulled up her pants and walked along the path closer to Norwood.

The surveillance videos then captured the suspect vehicle traveling away from the scene, where it eventually was driven onto I-95 south and through the EZ Pass toll lane, revealing the vehicle's tag number. Investigators obtained the vehicle's registration and determined the vehicle was registered to Quinn's mother. They also obtained the address associated with the vehicle and subsequently executed a search warrant at that address. The officers recovered various items, including a black pair of boots with dirt on them, a black pair of pants with mud on them, a black "do rag",[13] and a jacket on which there was dirt.

[13] Do-rag is defined as "a close-fitting, typically stretchable piece of cloth that is worn on the head (as to hold a hairstyle in place) and that usually has long ends which are tied in the back[.]" *Do-Rag*, Merriam-Webster, https://www.merriam-webster.com/dictionary/do-rag (last visited Oct. 21, 2022).

Officers found mail at the home addressed to Quinn, connecting him to the residence.[14] Moreover, a database search of all the males living at that address revealed that Quinn and another man lived there.[15] Officers recovered a Samsung cell phone and records for the phone, which they determined belonged to Quinn's mother but was being used by Quinn.

Officers also executed a search warrant on the Nissan Maxima and collected evidence from the vehicle, including a Samsung cell phone, a "do rag", and an EZ Pass. The lead detective on the case testified at trial that he physically examined the Samsung phone that was recovered from the vehicle, and it was dirty. An FBI special agent ("agent") analyzed phone records associated with the Samsung phone that was recovered from the Nissan Maxima. The agent reviewed the cell phone records from the date of the incident and testified that the Samsung phone was in the area of Quinn's address at 6:18 a.m. By 7:28 a.m. the Samsung phone was in Dundalk near Norwood, where activity was detected from a cell phone tower that provided coverage to the school in that area. Between 8:04 a.m. and 8:41 a.m. the agent determined the Samsung phone moved from the area around I-70 and I-695 to the area around Pimlico Raceway and northwest Baltimore.

A forensic serologist examined the clothing recovered from the SAFE kit for the presence of blood, semen, and saliva and took swabs for touch DNA.[16] She also took swabs

[14] Quinn also testified at trial that he was living at the subject residence at the time of the incident.

[15] Investigating officers recovered a cell phone associated with the other man that lived at the address. They determined the man's cell phone was in Georgia at the time of the incident.

[16] The forensic serologist explained that touch DNA is DNA that is typically left behind

from the clothing, vaginal swab, and SAFE kit obtained at GBMC and buccal swabs obtained from Quinn, which were sent out for additional testing. The forensic serologist, who was offered as an expert witness in the field of forensic serology at trial, testified that A.'s clothing was negative for blood, semen, sperm and saliva. However, amylase, a component of saliva, was detected on swabs from A.'s fingernails.

A supervisor from Bode Technology oversaw the DNA testing and analysis of the swabs. Quinn was excluded as a possible contributor to the DNA recovered from A.'s underwear. The supervisor, who was recognized as a forensic expert in DNA at trial, indicated that various factors contribute to how much DNA could be left in an item and, therefore, how much DNA could be detected. The supervisor testified that it is possible that a person could put their finger in a vagina and not leave detectable amounts of touch DNA.

At the conclusion of the evidence, the jury found Quinn guilty of first degree rape, attempted first degree rape, and kidnapping. The court imposed a life sentence without parole for first degree rape, a concurrent life sentence for attempted first degree rape, and merged the kidnapping conviction. After sentencing, this appeal followed.

Additional facts will be included as they become relevant to the issues.

from skin cells after touching an item. Touch DNA is typically found in lower amounts as compared to bodily fluids such as semen, saliva, and blood, which have DNA in higher concentrations.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN DENYING QUINN'S MOTION TO DISMISS.

Quinn argues that the circuit court erred in denying his motion to dismiss because his trial was not held within 180 days from the date on which his counsel entered her appearance. Quinn contends that, because a good cause hearing was not held within the 180-day *Hicks* period, as required by Maryland Rule 4-271 and Section 6-103 of the Criminal Procedure Article, his case could not be postponed beyond that deadline. Quinn further claims Chief Judge Mary Ellen Barbera of the Court of Appeals ("Chief Judge Barbera") lacked the authority to issue various administrative orders suspending or tolling the application of the 180-day rule in response to the COVID-19 emergency.

The State asserts that although Quinn's trial commenced after the original *Hicks* deadline, the circuit court found good cause to postpone the case due to the Covid-19 pandemic-induced court closures. The State also asserts the original *Hicks* deadline was legally tolled or suspended because of a series of administrative orders suspending all criminal jury trials as a result of the pandemic. We agree with the State.

A. There was Good Cause to Postpone Quinn's Trial Beyond the Original *Hicks* Deadline.

The scheduling of a trial date in a criminal matter is governed by Section 6-103 of the Criminal Procedure Article and Maryland Rule 4-271. Together, they require, absent a showing of good cause, "a criminal case be brought to trial within 180 days of the appearance of counsel or the appearance of the defendant before the circuit court, whichever occurs first." *Choate v. State*, 214 Md. App. 118, 139 (2013). The 180-day

deadline, known as the "*Hicks* date," emanates from *State v. Hicks*, 285 Md. 310 (1979). The 180-day rule is "mandatory and dismissal of the criminal charges is the appropriate sanction for violation of that time period" if good cause for the delay has not been established. *Ross v. State*, 117 Md. App. 357, 364 (1997).

The administrative judge's decision to postpone a trial beyond the *Hicks* date is within the court's "wide discretion" and carries a "heavy presumption of validity." *Fields v. State*, 172 Md. App. 496, 521 (2007). In reviewing an administrative judge's decision to postpone trial beyond the 180 days, we "shall not find an absence of good cause unless the defendant meets the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law." *State v. Frazier*, 298 Md. 422, 454 (1984). The "unavailability of a judge, prosecutor, or courtroom – or general court congestion in a particular jurisdiction – could satisfy the good cause standard for a continuance under the *Hicks* rule." *Tunnell v. State*, 466 Md. 565, 587 (2020).

In the present case, the first appearance of counsel on Quinn's behalf was on January 28, 2020, with an original *Hicks* deadline of July 26, 2020. Quinn's first trial date was scheduled for July 21, 2020, which was within the original *Hicks* deadline. Quinn contends no good cause hearing was held within the 180-day period, although one was scheduled for July of 2020 but was cancelled as a result of a June 3, 2020, Administrative Order extending *Hicks* deadlines. However, the Honorable Kathleen Gallogly Cox, the Chief Administrative Judge for Baltimore County, found good cause to postpone all Baltimore County Circuit Court cases due to the pandemic-induced court closures. Following the original motions hearing on October 23, 2020, on November 4, 2020, the court issued a

memorandum opinion explaining:

> Courtrooms, jurors, and the Court itself were unavailable for months due to Covid-19 court closures. [] [J]ury trials stopped due to the pandemic in March [of 2020] and have just resumed on October 5, 2020. Also, Chief Administrative Judge Kathleen Gallogly Cox issued an order finding good cause for all cases to be postponed in light of court closures in the midst of the Covid-19 pandemic.[17] This squarely falls within the "good cause" Hicks exception. Therefore, Defendant's trial date can be taken beyond the original Hicks date.

There were additional motions hearings on November 9 and December 8, 2020, in which Quinn renewed his motion to dismiss for *Hicks* violations, and the court maintained its earlier ruling. Quinn recognizes that the circuit court found good cause at these hearings to extend the 180-day period, but he takes issue with the fact that these hearings were held outside of the original 180-day period.

In response, the State asserts it was immaterial that the circuit court's good cause finding did not follow a hearing on the matter. Citing *Hogan v. State*, 240 Md. App. 470 (2019), the State contends Quinn was not entitled to an individualized finding of good cause because the *Hicks* rule exists broadly to "protect the societal interest in the prompt trial of criminal cases" and the "benefits that the rule confers upon defendants are incidental." *Id.* at 500 (internal citations omitted). We conclude that although Quinn's trial commenced after the original *Hicks* date, Rule 4-271 and Criminal Procedure Article

[17] On October 23, 2020, Administrative Judge Cox issued a Memorandum to the motions judge, as well as attorneys for the State and defense counsel. That Memorandum directed the motions judge to make a "good cause" finding on the record concerning the reasons for the postponement of Quinn's trial. The Memorandum further indicated the original postponement was due to the "COVID closure" and provided data concerning the reasons for a further delay. Specifically, the Memorandum included data regarding the backlog of criminal cases in Baltimore County.

("CP") § 6-103 were not violated. The Administrative Judge's global order postponing all Baltimore County Circuit Court Cases, including Quinn's, because of the COVID-19 pandemic was supported by good cause. The unavailability of judges, courtrooms, and juries supported the circuit court's decision to extend the *Hicks* deadline. Therefore, the circuit court did not err in denying Quinn's motion to dismiss.

B. Quinn's Original *Hicks* Deadline Was Legally Tolled Because of the Chief Judge's Administrative Orders in Response to the COVID-19 Pandemic.

Quinn next argues that Chief Judge Barbera did not have the authority to suspend the running of the 180-day rule because that authority rests with the legislature. Quinn contends the circuit court was required to dismiss the charges against him pursuant to *Hicks* because the General Assembly did not suspend the 180-day rule and did not give Chief Judge Barbera the authority to do so. However, even if we had not agreed that good cause existed prior to the original *Hicks* date, dismissal would not be required because Chief Judge Barbera acted within her legal authority when she tolled the 180-day deadline.

On March 12, 2020, Chief Judge Barbera issued the first of a series of administrative orders in response to the state of emergency caused by the COVID-19 pandemic.[18] In those orders, Chief Judge Barbera found that the COVID-19 outbreak had caused "an emergency . . . that poses a threat of imminent and potentially lethal harm to vulnerable individuals

[18] *See* Administrative Order on the Statewide Suspension of Jury Trials (March 12, 2020), https://mdcourts.gov/sites/default/files/admin-orders-archive/20200312suspensionofjury trials.pdf; Administrative Order on the Statewide Suspension of Non-Essential Judicial Activities Due to Emergency (March 12, 2020), https://www.courts.state.md.us/sites/default/files/admin-orders-archive/20200312suspensionnonessential.pdf.

who may come into contact with a court or judicial facility and personnel[.]" Due to that emergency, Chief Judge Barbera suspended jury trials and certain non-essential judicial activities. The following day, on March 13, the Chief Judge issued an administrative order that closed courthouses to the public except for certain emergency matters.[19] An additional administrative order tolled or suspended statutory and rule deadlines to hear pending matters, including criminal cases, effective March 16, 2020, by the number of days that the courts were closed to the public.[20] On May 22, 2020 Chief Judge Barbera issued another administrative order lifting the suspension of jury trials beginning on October 5, 2020 and providing additional tolling of 30 days from that date.[21]

The Court of Appeals recently considered whether Chief Judge Barbera acted within her authority when, in her capacity as administrative head of the Maryland Judiciary, she issued the administrative tolling order during the pandemic. *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 340 (2022). The Court of Appeals, citing Article IV, Section 18 of the Maryland Constitution and Maryland Rules 16-1001 and 16-1003(a)(7) concluded that the

[19] *See* Administrative Order on Statewide Closing of the Courts to the Public Due to the COVID-19 Emergency (March 13, 2020), https://mdcourts.gov/sites/default/files/admin-orders-archive/20200313statewideclosingofcourts.pdf.

[20] *See* Administrative Order on Emergency Tolling or Suspension of Statute of Limitations and Statutory Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters (April 3, 2020), https://mdcourts.gov/sites/default/files/admin-orders-archive/20200403emergencytollingorsuspensionofstatutesoflimitationsetc.pdf.

[21] *See* Administrative Order Lifting the Statewide Suspension of Jury Trials and Resuming Grand Juries (March 22, 2020), https://mdcourts.gov/sites/default/files/admin-orders-archive/20200522liftingthestatewidesuspensionofjurytrialsandresuminggrand juries.pdf.

Chief Judge had "ample and explicit authority" to issue the administrative tolling order. *Id.* at 369. In reaching its decision, the Court of Appeals held that the Chief Judge's administrative tolling order did not usurp the Legislative Branch's power because the order was based on rules that fell within the Court's "practice and procedure" and administrative functions under the Maryland Constitution. *Id.* at 382. The Court further concluded the administrative tolling order was "inherently within the Court's constitutional rulemaking power." *Id.* at 384.

Based on the Court of Appeals' decision in *Murphy*, Quinn's argument that Chief Judge Barbera was without the authority to suspend the 180-day rule is without merit. Although *Murphy* involved the tolling of the statute of limitations in a civil action, the *Hicks* deadline in Quinn's case likewise "falls within the field of procedural matters in which the Court may play a role." *Id*. at 376. Therefore, applying the Court's holding in *Murphy*, we conclude Chief Judge Barbera acted within her authority when she suspended judicial proceedings and tolled deadlines with respect to criminal matters, including Quinn's case.

Having determined the Chief Judge of the Court of Appeals had authority to issue the administrative tolling order, we turn to the calculation of the pertinent deadlines in Quinn's case. When criminal jury trials were suspended and statutory rules and deadlines were tolled effective March 16, 2020, there were 132 days remaining before Quinn's original *Hicks* date of July 26, 2020. Thus, when Chief Judge Barbera lifted the statewide

suspension on jury trials by administrative order on October 2, 2020,[22] 132 days remained to begin Quinn's trial pursuant to Rule 4-271 and CP § 6-103. With the additional tolling of 30 days from October 5, 2020, 162 days remained for a timely start of Quinn's trial. Therefore, Quinn's new *Hicks* date was March 16, 2021.

There is no dispute that Quinn's trial did not occur until after the new *Hicks* date. However, we agree with the State that the critical postponement date that pushed Quinn's case beyond the new *Hicks* date of March 16, 2021, occurred at the December 8, 2020, status conference. At that hearing, the court determined there was "abundant good cause" with respect to how the scheduling of the trial had been handled up to that point in light of Chief Judge Barbera's administrative orders extending *Hicks*. At that time the trial was postponed to August 23, 2021. Because the court's good cause finding occurred prior to the new *Hicks* deadline of March 16, 2021, we can find no violation of Rule 4-271 and CP § 6-103 and Quinn's motion to dismiss was rightly denied.

II. THE CIRCUIT COURT DID NOT ERR IN DENYING QUINN'S MOTION TO SUPPRESS THE EVIDENCE OBTAINED FROM THE SEARCH OF HIS RESIDENCE AND VEHICLE.

On July 1, 2019, Chief Judge Barbera issued an order cross-designating Judge Paul Hanley of the Circuit Court for Baltimore County as a judge for the District Court of Maryland for one year. On December 6, 2019, Judge Hanley signed a search and seizure warrant for Quinn's residence and his vehicle, which was registered to his mother, both of

[22] *See* Second Amended Administrative Order Lifting the Statewide Suspension of Jury Trials and Resuming Grand Juries (Oct. 2, 2020), https://mdcourts.gov/sites/default/files/admin-orders-archive/20201002secondamendedorderliftingthestatewidesuspensionofjurytrialsandresuminggrandjuries.pdf.

which were located in Baltimore City.[23] The vehicle was towed from Quinn's residence in Baltimore City to Baltimore County, where it was searched.

Prior to trial, Quinn moved to suppress the evidence recovered from these locations, contending the warrants authorizing the searches exceeded the issuing court's jurisdiction because Judge Hanley signed the warrant as a circuit court judge and not in his capacity as a district court judge. At the suppression hearing, the circuit court denied Quinn's motion, explaining the following:

> Judge Hanley had the authority by cross-designation to do what he did. Yes, he is a Circuit Court judge, but he was cross-designated to be a District Court judge and he had the authority to sign the warrant. I don't think it is fatal to the warrant that the word circuit is under his name in his title versus district. I don't think that invalidates an otherwise legal, proper and valid warrant. So, I'm going to deny that motion[.]

On appeal, Quinn maintains that Judge Paul Hanley did not have jurisdiction to issue the warrants for his property, which was located in Baltimore City and not Baltimore County. Specifically, Quinn asserts that Judge Hanley did not have authority to sign the subject warrant because he is a judge in Baltimore County, not Baltimore City, and because he is a circuit court judge, not a district court judge. Therefore, Quinn contends the execution of the search and seizure warrant outside of Baltimore County exceeded the issuing court's jurisdiction and that the fruits of the unlawful search must be suppressed.

The State responds that the circuit court rightly denied Quinn's motion to suppress

[23] The appellate record does not contain a copy of the search warrant for Quinn's residence. However, at the suppression hearing on December 23, 2020, Quinn testified that Judge Hanley also signed the search warrant for his home. On appeal, the parties do not dispute that Judge Hanley signed the search warrant for Quinn's residence.

because the search warrants issued for Quinn's residence and vehicle were valid and the search of Quinn's vehicle occurred in Baltimore County. Alternatively, the State contends that even if the warrants authorizing these searches exceeded the issuing court's jurisdiction, the evidence is nonetheless admissible under the good faith exception to the warrant requirement. We conclude that the circuit court did not err in declining to suppress the evidence obtained from the search warrants.

We review the circuit court's denial of a motion to suppress based on the record of the suppression hearing. *Trott v. State*, 473 Md. 245, 253–54 (2021). The evidence is viewed in the light most favorable to the prevailing party, and the trial court's findings are accepted unless clearly erroneous. *Williamson v. State*, 413 Md. 521, 532 (2010). The credibility of the witnesses, the weight given to the evidence, and the reasonable inferences drawn from the evidence come within the province of the suppression court. *Madrid v. State*, 247 Md. App. 693, 714 (2020). We then make "an independent, de novo, constitutional appraisal by applying the law to the facts presented in a particular case." *Padilla v. State*, 180 Md. App. 210, 218–19 (2008) (quoting *Williams v. State*, 372 Md. 386, 401 (2002)).

The designation at issue was made pursuant to Section 18(b) of Article IV of the Maryland Constitution and Maryland Rule 16-102, both of which pertain to the administrative responsibilities of the Chief Judge of the Court of Appeals. Maryland Rule 16-102 designates the Chief Judge of the Court of Appeals as the administrative head of the Maryland judicial system. The rule provides that "[i]n the execution of that responsibility, the Chief Judge . . . may assign judges pursuant to Rule 16-108(b)." Md.

Rule 16-102(d). Rule 16-108 provides, in relevant part:

> (b) The Chief Judge of the Court of Appeals, by order, may assign (1) a judge of the District Court, a circuit court, or an appellate court to sit temporarily in another court other than an Orphans' Court . . .. While so assigned, the judge shall possess all of the power and authority of a judge of a court to which the judge is assigned.

Md. Rule 16-108(b). Section 18(b) of Article IV of the Maryland Constitution similarly provides:

> (2) [T]he Chief Judge of the Court of Appeals may, in case of a vacancy, or other illness, disqualification or other absence of a judge for the purpose of relieving an accumulation of business in any court assign any judge except a judge of the Orphans' Court to sit temporarily in any court except an Orphans' Court.

Md. Const. art. IV § 18. The July 1, 2019, Designation Order by Chief Judge Barbera reads:

> Under and by virtue of the authority contained in Section 18(b) of Article IV of the Constitution of Maryland and pursuant to Maryland Rule 16-102, I do hereby designate . . . the Honorable Paul J. Hanley . . ., Associate Judges of the Third Judicial Circuit of Maryland (Baltimore County), to sit, either alone or with one or more other Judges, as Judges of the District Court of Maryland – District 8 (Baltimore County), for the period from July 1, 2019 through June 30, 2020[.]

Quinn does not argue that Chief Judge Barbera violated the State Constitution or the Maryland Rules when she assigned Judge Hanley to sit temporarily as a district court judge. Rather, Quinn suggests that Judge Hanley could exercise his powers as a district court judge only when "the district court found itself short-handed and in need of extra help." Since there was no indication of any such need, Quinn asserts Judge Hanley could not properly issue a search warrant for Quinn's property in Baltimore City because the judge was assigned to the Baltimore County Circuit Court. However, Quinn's claim fails on the merits, as neither Section 18(b) of Article IV of the Maryland Constitution nor Maryland

Rule 16-102 require that a district court be "short-handed" or "in need of extra help" to trigger a proper designation.

Turning to Quinn's geographical argument, he relies on *Gattus v. State*, 204 Md. 589 (1954), in which the Court of Appeals held that the power of circuit court judges to issue warrants is limited to the county in which they sit. *Id.* at 595. Quinn recognizes that the holding in *Gattus* applies only to the jurisdiction of circuit court judges. However, unlike circuit courts of the state, under the Maryland Constitution, the jurisdiction of the District Court of Maryland is unified, meaning each district judge's jurisdiction is statewide. *Birchead v. State*, 317 Md. 691, 699 (1989). Thus, Judge Hanley, through his assignment as a district court judge, could properly issue a search warrant for Quinn's residence and vehicle in Baltimore City, despite his assignment to the Baltimore County courts. Since we have determined that Judge Hanley's cross-designation was valid and he had the authority to issue the search warrants in his capacity as a district court judge, we need not address whether the search of the vehicle was extraterritorial or whether the good faith exception to the warrant requirement applies.

III. THE CIRCUIT COURT DID NOT ERR IN DENYING QUINN'S MOTION TO SUPPRESS THE EVIDENCE OBTAINED FROM THE SEARCH OF THE SAMSUNG PHONE.

Quinn's next contention relates to his Samsung cell phone that was discovered during the search of the Nissan Maxima. According to Quinn, even though the warrant obtained to search the vehicle gave officers the authority to seize and search all electronic equipment found in the vehicle, that warrant was not sufficient to justify the search of the cell phone found in the car. Quinn maintains a separate search warrant for the cell phone

was needed, and since no such second warrant was obtained, the trial court erred when it denied his motion to suppress. Moreover, Quinn asserts the search of the Samsung phone was not harmless. Quinn argues that the police were only able to obtain phone records linking the cell phone to the time and location of A.'s assault after they turned the phone on and searched for its associated phone number. The State responds that Quinn's argument is not properly preserved for our review as the contents of the Samsung phone were never admitted into evidence. In any event, the State contends the independent source and inevitable discovery doctrines apply.

The Court of Appeals has stated the purpose of the preservation requirement is to ensure that the trial court had an opportunity to correct purported errors. *Givens v. State*, 449 Md. 433, 473 (2016). Moreover, "if the evidence that is the subject of the suppression hearing is never offered at trial, the trial judge's ruling on the motion is not preserved for appellate review." *Jackson v. State*, 52 Md. App. 327, 332 (1982), *overruled on other grounds by Huggins v. State*, 479 Md. 433 (2002). Similarly, "[t]he mere existence of improperly obtained evidence . . . is unimportant insofar as the criminal trial is concerned unless that evidence is at least proffered at the trial." *Linkey v. State*, 46 Md. App. 312, 315 (1980).

As a threshold matter, we agree with the State and conclude that Quinn's claim is unpreserved for our review because the contents of the phone were never admitted at trial. Although the police recovered the unlocked Samsung phone pursuant to the search warrant that permitted them to search "any and all electronic devices" found in the vehicle, the record does not support a finding that the police examined the contents of the phone. At

trial, the State did not attempt to admit any evidence obtained from the phone. When the State offered evidence of the number associated with the Samsung phone at trial, Quinn's counsel affirmatively stated, "No objection." Because the contents of the Samsung phone were not admitted at trial, Quinn's claim is not preserved for our review.

Although not explicitly stated, Quinn appears to argue that the phone number obtained from the search of the Samsung phone was poisonous fruit[24] because officers used that phone number to obtain cell phone records mapping the phone to the incident scene. However, assuming, *arguendo*, that we agreed with Quinn that a separate, specific warrant was needed to permit officers to search the Samsung phone, the evidence still would not be excluded because the inevitable discovery and independent source exemptions both apply. Under the inevitable discovery doctrine, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means then the deterrence rationale has so little basis that the evidence should be received." *State v. Sizer*, 230 Md. App. 640, 663 (2016). Similarly, when the State learns of the challenged evidence from a lawful, independent source, the evidence is admissible, and the exclusionary rule does not apply. *Id*. at 666.

We are persuaded that both the independent source and inevitable discovery doctrines would be applicable had the issue been preserved. During their investigation, police identified Quinn's Nissan Maxima and determined the registered owner through

[24] Appellant contends that "the major fruit of the search of the cell phone found in the Maxima was the phone number of the cell phone itself." "[T]he fruit of the poisonous tree doctrine excludes direct and indirect evidence that is a product of police conduct in violation of the Fourth Amendment." *Myers v. State*, 395 Md. 261, 291 (2006).

surveillance footage and records they subpoenaed from an EZ Pass toll booth. Because an EZ Pass transponder was used at the toll facility on I-95, police subpoenaed the EZ Pass account information from the Maryland Transit Authority. The account information for the transponder in question revealed that it was issued to Quinn's mother and the phone number associated with the account.

Moreover, in his application for a court order to obtain cell phone records for the Samsung phone, a detective assigned to the case explained he received the phone number from the phone's owner, Quinn's mother, who confirmed Quinn used that phone:

> Quinn was identified as the suspect in this case, and was arrested on 12/6/19. Upon his arrest, he had in his possession his mother's [] phone [number]. Upon speaking with [Quinn's mother], she stated her son's [] phone had not been working, so he has been using her phone. The ability to get historical information on the phone that [Quinn] has been using will help corroborate his involvement in this crime.

Contrary to Quinn's assertion that the police only connected the Samsung phone number when turning it on and searching it, it is clear the police learned, or would have learned, the cell phone number from independent sources—either through the EZ Pass account information or through Quinn's mother. Therefore, the inevitable discovery and independent source doctrines are both applicable, as officers discovered the phone number associated with the Samsung phone from lawful means, independent from any search of the contents of the phone itself.

IV. QUINN'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IS NOT PROPER ON DIRECT APPEAL.

Finally, Quinn argues the evidence adduced at trial was insufficient to convict him of rape, attempted rape, and kidnapping. Specifically, Quinn contends the evidence was

legally inadequate and did not establish beyond a reasonable doubt that he assaulted and raped A. Quinn claims his defense counsel was ineffective by failing to make any specific arguments on this point when counsel moved for judgment of acquittal at the close of the State's case and again at the conclusion of the evidence. Quinn acknowledges his counsel failed to comply with Maryland Rule 4-324(a), which states, "A defendant may move for judgment of acquittal on one or more counts . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all of the evidence. The defendant shall state with particularity all reasons why the motion should be granted." However, Quinn posits his counsel's failure to comply with Md. Rule 4-324(a) should be considered, on direct appeal, as a claim of ineffective assistance of counsel.

Relying on *Testerman v. State*, 170 Md. App. 324 (2006), Quinn asks us to conclude that his defense counsel's failure to make any specific arguments on why the motion for judgment of acquittal should be granted constitutes ineffective assistance of counsel. The State responds that Quinn failed to preserve his challenge to the sufficiency of the evidence, and his ineffective assistance of counsel claim is not properly before this Court on direct appeal of his conviction. We agree with the State and decline to review Quinn's claim of ineffective assistance of counsel.

The most appropriate method to resolve an ineffective assistance of counsel claim is a postconviction proceeding pursuant to the Maryland Uniform Postconviction Procedure Act. *Mosley v. State*, 378 Md. 548, 558–59, 560 (2003) ("Ineffective assistance of counsel is one of the claims cognizable under the Act, and it is the one most commonly raised."); *see generally* CP §§ 7-101–109 (2018 Repl. Vol.). A postconviction proceeding

is preferred—over a direct appeal of a conviction—because "the trial record rarely reveals why counsel acted or omitted to act, and such [a] proceeding[] allow[s] for fact-finding and the introduction of testimony and evidence directly related to [the] allegations of the counsel's ineffectiveness." *Mosley*, 378 Md. at 560. As a result, review of ineffective assistance of counsel occurs on direct appeal in "extremely rare situations." *Crippen v. State*, 207 Md. App. 236, 251 (2012).

We review a claim for ineffective assistance of counsel on direct appeal only when "the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim." *In re Parris W.*, 363 Md. 717, 726 (2001); *Mosley*, 378 Md. at 562 (explaining that "there may be exceptional cases where the trial record reveals counsel's ineffectiveness to be so blatant and egregious that review on [direct] appeal is appropriate" (internal quotations omitted)).

Here, the record is clear that Quinn's counsel did not raise below, as a basis for his motion for judgment of acquittal, that the evidence was insufficient to support Quinn's convictions. In fact, Quinn submitted his motion without any argument:

> [DEFENSE COUNSEL]: State having rested its case in chief, Your Honor, we would move for judgment of acquittal as to each and every count of the indictment. We will submit without argument.

Thereafter, defense counsel renewed his motion without specifying any ground:

> [DEFENSE COUNSEL]: [A]ll of the evidence having been concluded, we would renew our motion for judgment of acquittal. . . .
>
> * * *

> [DEFENSE COUNSEL]: [W]e would submit to the Court that we believe that the State's evidence, even at this stage, does not support the charges and we would ask the Court to grant a judgment of acquittal.
>
> THE COURT: Okay. Do you wish to be heard beyond that?
>
> [DEFENSE COUNSEL]: No, Your Honor.

Maryland Rule 4-324(a) is not satisfied, and the issue is not preserved for review. Moreover, the trial record is silent as to defense counsel's strategy in omitting specific reasons why the motion for judgment of acquittal should have been granted. Quinn did not raise an ineffective assistance of counsel claim in the circuit court, and nothing in this record suggests defense counsel's rationale for declining to state with particularity the reasons why the motion for judgment of acquittal should have been granted. To determine this claim on direct appeal, we would have to speculate about defense counsel's strategy, which puts this Court in the "'perilous process of second-guessing' without the benefit of potentially essential information." *Mosley,* 378 Md. at 561 (quoting *State v. Johnson*, 292 Md. 405, 435 (1982)). Based on this record, we are not inclined to diverge from the usual process and address defense counsel's effectiveness on direct appeal. We conclude that Quinn must challenge his counsel's effectiveness in a post-conviction proceeding as the issue is not properly before this Court on direct review.

However, even if we were to consider Quinn's specific ineffective assistance of counsel claim on direct appeal, he still would not prevail because the evidence was sufficient to sustain the convictions. A reviewing court's role is not to retry a case and weigh evidence or attempt to resolve conflicts within the evidence—it defers to the jury's inferences and determines whether they are supported by the evidence. *Smith v. State*, 415

Md. 174, 185 (2010). Put differently, we do not "second-guess the jury's determination where there are competing rational inferences available." *Id.* (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). The relevant question on review of sufficiency of the evidence to support a criminal conviction 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. Smith*, 374 Md. at 533 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

When assessing sufficiency, we do not discriminate between direct and circumstantial evidence. *Williams v. State*, 251 Md. App. 523, 569 (2021).

> Even in a case resting solely on circumstantial evidence, . . . if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence.

Ross v. State, 232 Md. App. 72, 98 (2017).

Here, the evidence was sufficient for a reasonable juror to conclude that Quinn was the individual who assaulted and raped A. Indeed, the surveillance videos collected from the incident scene and surrounding areas captured the perpetrator, in the distinct black Nissan Maxima, following A. as she was walking to school. The videos also depicted the assault on A. and then showed the suspect getting in the vehicle before driving away from the scene. The jury could reasonably infer from the surveillance footage that Quinn was the man depicted in the videos who followed and attacked A. before driving away from the scene in the vehicle that matched the description of the vehicle owned by his mother.

Following the incident, A. was physically examined and had bruising and scratches. Mud and debris were found in her genital area and her clothes were wet and muddy. During a search of Quinn's residence, officers recovered a pair of black boots, black pants, and a black jacket—all of which had mud on them—and a black do rag. According to A., her assailant was wearing all black at the time of the incident. Moreover, mapping of the cell phone number associated with the Samsung phone Quinn had in his possession revealed that the phone was in the area at the time of the incident. Even though, as Quinn argues, there was no forensic evidence connecting him to the assault on A., the forensic expert's testimony showed that many factors contribute to how much detectable DNA could be left behind on an item; it was possible for Quinn to digitally penetrate A. and not leave behind detectable amounts of touch DNA.

We conclude that the evidence taken collectively, and when viewed in the light most favorable to the State, was sufficient for the jury to find Quinn guilty of first degree rape, attempted first degree rape, and kidnapping.

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