Circuit Court for Prince George's County
Case No. CT180696X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1984

September Term, 2019

---

DIETRICH AMES

v.

STATE OF MARYLAND

---

Wells,
Gould,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Wells, J.

---

Filed: October 20, 2020

A jury empaneled in the Circuit Court for Prince George's County convicted appellant Dietrich Ames of sexual abuse of a minor (Count 1), second-degree assault (Count 3), and fourth-degree sex offense (Count 4) for inappropriate contact with a fifteen-year old girl. The jury acquitted him of third-degree sex offense (Count 2). The court sentenced Ames to 25 years' incarceration on Count 1, suspending 20 years, and merged Counts 3 and 4. The court placed Ames on 5 years' supervised probation.

This appeal followed. Ames presents three questions for our review, which we have condensed and rephrased for clarity:[1]

I. Did the trial court abuse its discretion in declining to enforce the State's plea offer?

II. Did the trial court abuse its discretion in denying Ames' motion to dismiss based on a speedy trial violation?

III. Did the trial court abuse its discretion in controlling defense counsel's examination of Detective Michael Visbal?

[1] Ames' verbatim questions are:

1. Did the Circuit Court err by denying the Appellant's Motion for Appropriate Relief seeking to enforce the plea agreement offered him by the State of Maryland? The Appellant asserts that he waived his statutory right to a speedy trial, under Maryland Law, in reliance on a plea offer made to him by the State of Maryland and that was therefore it was (sic) a violation of his rights to deny him an opportunity to enter that plea.
2. Did the Circuit Court err by denying the Appellant's Motion to Dismiss for speedy trial violations [?] The Appellant asserts that the sixteen (16) month time between indictment and trial was a violation of his 6th Amendment Right to a Speedy Trial and analogous State Constitutional Provisions.
3. Did the Circuit Court err by preventing Defense Counsel from asking leading questions to the head criminal investigator of the State's case, Detective Mike Visbal?

We hold that under the facts presented, no plea agreement was formed, therefore, the circuit court could not enforce the State's unaccepted offer. The court did not err in denying Ames' motion to dismiss based on an alleged speedy trial violation. Finally, the court properly exercised its discretion in how it allowed counsel to question Det. Visbal. We, therefore, affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

The underling events that led to appellant Dietrich Ames' convictions are important, but not particularly pertinent to his appeal. More relevant for us are the procedural developments that occurred after a Prince George's County grand jury indicted Ames for sexually assaulting a fifteen-year old girl, S.P.[2]

Neither side disputes that after he was served with the indictment and had his first court appearance, Ames' Rule 4-271 or Hicks[3] date was November 19, 2018. Trial was originally scheduled for September 12, 2018, but five days before then, Ames and the State jointly moved to postpone the trial. The court granted the motion. Trial was rescheduled to November 19, 2018, which was also the Hicks date.

### A. The Trial and Hicks Date: November 19, 2018

Ames' counsel and a prosecutor appeared for trial. The assigned judge was unavailable. The parties then went to the administrative judge's courtroom. There, the judge stated that it was his understanding that the parties needed to postpone the trial "to

[2] For her privacy, we refer to the minor victim by her initials.

[3] *State v. Hicks*, 285 Md. 310 (1979).

contemplate a plea offer." The prosecutor told the court that she had extended an offer. Ames' counsel agreed. The court then asked about the Hicks deadline. Ames' counsel immediately tendered a written Hicks waiver that Ames had signed. The judge conducted an oral examination of Ames to determine whether Ames understood what he was doing. Concluding that he did, the court found that Ames "has made a knowing and intelligent waiver of his Hicks right." The judge said, "I will grant the request to go beyond the current Hicks date. Looks like you need a motions date and a trial date. Correct?"

Rather than discuss a new trial date, the prosecutor and Ames' counsel outlined a dispute about whether Ames could litigate a motion to suppress after he had voluntarily withdrawn all motions. The judge offered to set a hearing on the issue for Wednesday November 21, 2018. Both attorneys agreed and the proceedings ended.

**B. The Hearing of November 21, 2018: State's Motion to Strike**

The attorneys and Ames reappeared before the same judge to argue the State's motion to strike Ames' motion to suppress. Defense counsel informed the court that he and the prosecutor "had essentially worked out a plea," but the State had withdrawn the offer. Ames' counsel told the court that he was ready for trial two days ago but, because the case was likely to be resolved by a plea of guilty, he believed the State was not going to pursue the motion to strike. Based on this, counsel said that Ames had agreed to waive Hicks. Counsel asked the court "to consider that when ruling [on the motion to strike]." Counsel then argued why he thought he should prevail and asked the court to deny the State's motion. After hearing argument, the court found good cause to allow Ames to file

a suppression motion. The court told counsel to select a hearing date before trial.[4]

**C. The Hearing of March 8, 2018: Ames' Motion to Enforce Plea Agreement.**

On February 22, 2019, Ames filed a motion titled, "Motion for Appropriate Relief/Motion to Enforce Plea Offer, or in the alternative, Dismiss the Case." On March 8, 2019, a prosecutor, Ames, and his counsel appeared for a hearing on this motion. The same judge who had presided at the previous hearings heard argument. The transcript of the hearing barely spans six pages. The court denied Ames' motion.

**D. March 19, 2019: The Second Trial Date.**

Trial was scheduled for March 19, 2019. Because no judge was available, the trial had to be postponed. Even though Ames' counsel said that he understood that trial could not go forward, he noted for the record that Ames was "opposed to this continuance and that he does not waive his Constitutional speedy trial right."

**E. Trial: August 20, 2019**

Before trial started, Ames' counsel moved to dismiss the charges based on a violation of speedy trial. After a hearing, the court denied that motion and jury selection began.

At trial, the victim, S.P., recounted that she had known Ames for most of her life. She knew him as an "uncle" and who was frequently at S.P.'s home. In April 2018, S.P.'s cell phone was damaged, and Ames offered to take her to get it repaired. They arrived at

[4] Though not relevant to this appeal, on February 15, 2019, the court heard Ames' motion to suppress items seized from Ames' house pursuant to a search warrant. The court denied the motion to suppress.

the store only to find it was closed. Ames and S.P. decided to get something to eat and then went to Ames' house to watch a movie. Ames lived in the basement of his mother's house. S.P. later learned that Ames' mother was not home at that time.

At some point, S.P. and Ames agreed that she would spend the night in Ames' room. After she fell asleep, S.P. testified that Ames pulled her pants off and began to rub her legs and arms with baby oil. Afterward, S.P. testified that he pulled her underwear off, fondled her buttocks and vagina, then inserted a finger into her vagina. He then preformed cunnilingus. According to S.P., Ames alternated between putting his mouth and fingers on her vagina. While this was happening, S.P. said she pretended she was asleep. She said that she was afraid to tell Ames to stop and after about 20 minutes, he finally did.

The next morning, she took a shower, put on the same clothes she had worn the day before, and said nothing to Ames about what occurred the previous night. In fact, S.P. said that she was "in shock." After going to another store to get the phone repaired, Ames took S.P. home but stayed there well into the evening. After he left, S.P. confided to her grandmother that something unpleasant had happened to her while she was with Ames but could not say what. Her grandmother asked her to write down what was troubling her. She did and showed it to her grandmother, who immediately called the police and S.P.'s mother, who was out of the area at the time. The police interviewed S.P. and took her to a hospital where Arnita Shelton, a forensic nurse, examined and interviewed her.

Nurse Shelton testified that she performed a sexual assault examination of S.P. At that time, she also took swabs from S.P.'s vagina and took S.P.'s clothes for examination. Forensic chemist Joseph Rose testified that his DNA tests of the swabs indicated that only

S.P.'s DNA was present. Rose confirmed that no male DNA was present on the swabs from S.P.'s vagina.

S.P.'s mother and grandmother testified about Ames. Specifically, they said they both knew Ames from church and had thought of him warmly, much like another family member. Both ladies said they trusted Ames to be alone with S.P., and that he had often watched S.P. and the family's other children.

S.P.'s grandmother recounted that on the day S.P. revealed the sexual assault, Ames had brought S.P. home that morning. He then took S.P.'s brothers and the grandmother to a shopping mall. S.P. stayed at home. When the grandmother returned, she realized that S.P. was "shaken" and began crying. She said that S.P. was trembling and visibly upset but would not say what was troubling her. The grandmother suggested S.P. write down her thoughts. S.P. would write down something, her grandmother would read it and write a question and S.P. would reply in writing. After this written dialogue took place, and the extent of what happened became apparent, the grandmother called the police.

S.P.'s grandmother mentioned that Ames called soon thereafter. Apparently, the grandmother's son had called Ames and confronted him with the allegations. Ames was now calling to find out what S.P. had told her grandmother. The grandmother told Ames what S.P. had written to her. The grandmother said that Ames became quiet and then tried to apologize. The grandmother explained that Ames then tried to explain that he was only teaching S.P. how to "shave under her arms and things of that caliber."

Ames' counsel called Detective Michael Visbal to testify. Det. Visbal explained that he had interviewed S. P. and later accompanied her to the hospital for a sexual assault

examination. Det Visabl said that after S. P. was examined at the hospital, someone, perhaps it was him or maybe his partner, picked up the sexual assault kit from the hospital and placed it in an evidence locker. Later, Det. Visbal got a search warrant for Ames' home. The detective recalled only seizing a bottle of lubricant from the house. Det. Visabl admitted that although he had taken Ames' cell phone, he did not look through it nor did he obtain a search warrant to examine its contents.

Ames testified, flatly denying that he ever inappropriately touched S.P. He recounted that on the day of the alleged sexual assault he had taken S.P. to a store to get her phone repaired, but the store was closed. He and S.P. went to get something to eat, then went back to his place to "catch a scary movie," after which, Ames said he went to sleep. The next morning, he woke up and took S.P. back to her grandmother. He then took the grandmother and S.P.'s two brothers to a shopping mall and they had something to eat.

The jury convicted Ames of sexual abuse of a minor, fourth-degree sexual offense, and second-degree assault. The jury acquitted him of third-degree sexual offense. The court sentenced Ames to 25 years' incarceration for sexual abuse of a minor, suspending 20 years, and merged the other convictions. The court placed Ames on 5 years' supervised probation. Additional facts may be discussed, as needed.

## DISCUSSION

### I. THE COURT DID NOT ABUSE ITS DESCRETION WHEN IT DECLINED TO ENFORCE THE STATE'S PLEA OFFER

#### A. The Parties' Contentions

Ames insists that the circuit court erred in not requiring the State to make a plea

offer available to him after it was withdrawn; he claims that he waived his right to a speedy trial in anticipation of accepting the offer. Citing primarily *State v. Brockman*, 277 Md. 687, 697 (1976) Ames argues that "fair play" demanded the court intervene and compel the State to hold the offer open to allow him to accept it. Further, Ames argues that because he did not knowingly and voluntarily waive his right to a speedy trial, the court's postponement was invalid as it was done without good cause. The State argues that it was free to withdraw its plea offer at any time prior to acceptance. In the State's view, the prosecutor withdrew its offer prior to Ames' acceptance. Additionally, the State maintains that nothing in the record suggests that Ames' waiver of his right to a speedy trial was conditioned on him accepting the plea offer.

**B. Analysis**

1. The Hicks Rule

The Legislature passed what was previously Maryland Code, Article 27 § 591, now Maryland Code Annotated (2018, 2019 Repl. Vol.), Criminal Procedure Article ("C.P.") § 6–103,[5] which codified the General Assembly's mandate that "there should be a prompt

[5] **Time for trial**
(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.

**Change of trial date on motion of party or initiative of court**
(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

disposition of criminal charges in the circuit courts." *Dorsey v. State*, 349 Md. 688, 700(1998), (quoting *State v. Hicks*, 285 Md. 310, *on motion for reconsideration*, 285 Md. 334 (1979)). The Court of Appeals recognized this legislative intent when it promulgated Maryland Rule 746, now Maryland Rule 4-271, which requires the State to bring a defendant to trial within 180 days after the defendant's arraignment or counsel's entry of appearance, whichever is earlier. Specifically, Rule 4-271(a)(1) states:

> (a) Trial Date in Circuit Court.
> (1) 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. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214 (a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. 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. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

The last day that the trial date can occur under Rule 4–271(a)(1) "is commonly referred to as [the] Hicks date." *Ashton v. State*, 185 Md. App. 607, 619, *cert. denied*, 410 Md. 165, (2009).

---

(ii) on the initiative of the circuit court.
(2) If a circuit court trial date is changed under paragraph (1) of this subsection, any subsequent changes of the trial date may only be made by the county administrative judge or that judge's designee for good cause shown.

**Rules adopted by Court of Appeals**
(c) The Court of Appeals may adopt additional rules to carry out this section.

If the State cannot bring a defendant to trial within 180 days, "the county administrative judge or his designee must make a finding of good cause justifying the postponement of the trial date beyond the prescribed time limit. Accordingly, postponements that cause the scheduling of a criminal trial beyond the 180-day period must be granted by the county administrative judge or [their] designee and must be supported by good cause." *State v. Brown*, 307 Md. 651, 657–58 (1986). "Good cause" determinations are within the administrative judge's "wide discretion." *State v. Frazier*, 298 Md. 422, 451-54 (1984). Further, the Court of Appeals has firmly stated that neither the State, a defendant, nor a trial court "are empowered to dispense with the mandates of [C.P. § 6–103] and Rule [4–271]." *Id.* And the Court has reiterated more than once that "the Hicks Rule serves as a means of protecting society's interest in the efficient administration of justice. The actual or apparent benefits of [C.P. § 6–103] and Rule 4–271 confer upon criminal defendants are purely incidental." *Goldring v. State*, 358 Md. 490, 494 (2000) (citations omitted) (quoting *Dorsey*, 349 Md. at 701.) The remedy for a violation of the Hicks rule is dismissal of the charges. *Hicks*, 285 Md. at 317-18.

Although not explicitly stated in the statute or rule, a defendant may consent to a trial date beyond the Hicks date. In *Hicks*, the Court expressly stated that dismissal of charges would be inappropriate in situations where a defendant, with or without counsel, consented to a trial date beyond the 180-day deadline. *Hicks*, 285 Md. at 335-36. *See also*, *Tunnell v. State*, 466 Md. 565, 586 (2020) ("[T]his gloss on the statute and rule eliminated the potential for manipulation of the (newly understood) mandatory rule by a defendant agreeing to a postponement and then seeking dismissal based on that postponement.")

2. Plea Agreements

Maryland Rule 4-243 governs plea agreements.[6] In general, the State and a defendant may enter into an agreement, subject to court's acceptance. The State must give prior notice to the victim.

[6] **(a) Conditions for Agreement.**
(1) *Terms.* The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:
(A) That the State's Attorney will amend the charging document to charge a specified offense or add a specified offense, or will file a new charging document;
(B) That the State's Attorney will enter a nolle prosequi pursuant to Rule 4-247 (a) or move to mark certain charges against the defendant stet on the docket pursuant to Rule 4-248 (a);
(C) That the State's Attorney will agree to the entry of a judgment of acquittal on certain charges pending against the defendant;
(D) That the State will not charge the defendant with the commission of certain other offenses;
(E) That the State's Attorney will recommend, not oppose, or make no comment to the court with respect to a particular sentence, disposition, or other judicial action;
(F) That the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.
(2) *Notice to Victims.* The State's Attorney shall give prior notice, if practicable, of the terms of a plea agreement to each victim or victim's representative who has filed a Crime Victim Notification Request form or submitted a request to the State's Attorney pursuant to Code, Criminal Procedure Article, § 11-104.
**(b) Recommendations of State's Attorney on Sentencing.** The recommendation of the State's Attorney with respect to a particular sentence, disposition, or other judicial action made pursuant to subsection (a)(1)(E) of this Rule is not binding on the court. The court shall advise the defendant at or before the time the State's Attorney makes a recommendation that the court is not bound by the recommendation, that it may impose the maximum penalties provided by law for the offense to which the defendant pleads guilty, and that imposition of a penalty more severe than the one recommended by the State's Attorney will not be grounds for withdrawal of the plea.
**(c) Agreements of Sentence, Disposition, or Other Judicial Action.**
(1) *Presentation to the Court.* If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense

In *Rios v. State*, 186 Md. App. 354 (2009), we explained the two requirements for a valid plead agreement in a criminal case.

> *First*, the State and defendant must reach an agreement. Md. Rule 4–243(a)(l)(2008). *Second*, the parties must then present the agreement to the court, which has the discretion to accept or reject the plea. Md. Rules 4–242(c), (d). If the plea agreement calls for a particular sentence, disposition,

---

counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.
(2) *Not Binding on the Court.* The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.
(3) *Approval of Plea Agreement.* If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.
**Committee note:** As to whether sentence imposed pursuant to an approved plea agreement may be modified on post sentence review, see *Chertkov v. State*, 335 Md. 161 (1994).
(4) *Rejection of Plea Agreement*. If the plea agreement is rejected, the judge shall inform the parties of this fact and advise the defendant (A) that the court is not bound by the plea agreement; (B) that the defendant may withdraw the plea; and (C) that if the defendant persists in the plea of guilty, conditional plea of guilty, or a plea of nolo contendere, the sentence or other disposition of the action may be less favorable than the plea agreement. If the defendant persists in the plea, the court may accept the plea of guilty only pursuant to Rule 4-242 (c) and the plea of nolo contendere only pursuant to Rule 4-242 (e).
(5) *Withdrawal of Plea.* If the defendant withdraws the plea and pleads not guilty, then upon the objection of the defendant or the State made at that time, the judge to whom the agreement was presented may not preside at a subsequent court trial of the defendant on any charges involved in the rejected plea agreement.
**(d) Record of Proceedings.** All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.

> or other judicial action, the court must also approve that portion of the plea agreement. Md. Rule 4–243(c).

*Rios,*186 Md. App. at 362-63 (citing *Kisamore v. State*, 286 Md. 654, 657–58 (1980)). We granted Rios' request for an interlocutory appeal to enforce a plea agreement under the collateral order doctrine. *Id.* at 364-66. But, preliminarily, we had to determine whether a plea agreement had been formed. We looked to *Brockman*, previously cited, for guidance. There, the Court of Appeals established the applicable standards for review of plea negotiations:

> [T]he standard to be applied to plea negotiations is one of fair play and equity under the facts and circumstances of the case, which, although entailing certain contract concepts, is to be distinguished from ... the strict application of the common law principles of contracts. The rigid application of contract law to plea negotiations would be incongruous since, for example, the trial court is not ordinarily bound by the compact and, as the State concedes, it cannot obtain "specific performance" of a defendant's promise to plead guilty.

*Brockman*, 277 Md. at 697(citations omitted).

We also noted that in *Solorzano v. State*, 397 Md. 661 (2007), "[c]ontract principles alone, however, are not enough to resolve disputes over the proper interpretation of a plea bargain. Due process concerns for fairness and the adequacy of procedural safeguards guide any interpretation of a court approved plea agreement." *Id*. at 668 (citations omitted)). Further, *Sifrit v. State*, 383 Md. 77 (2004), emphasized that it was "appropriate" for a court "to consider fair play and equity when reviewing an agreement between the State and a criminal suspect....". *Id*. at 93–94.

We saw no reason why contract principles should not be applied to the facts of Rios' case to determine whether a plea agreement was formed. *Rios,* 186 Md. App. at 367. The

creation of a contract requires, generally, that one party make an offer and that the offeree accept it. *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). The Court of Appeals explained the requisites of an offer in the civil context in *Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531 (1977):

> An offer must be definite and certain. *Peoples Drug Stores v. Fenton*, 191 Md. 489, 494 (1948). To be capable of being converted into a contract of sale by an acceptance, it must be made under circumstances evidencing an express or implied intention that its acceptance shall constitute a binding contract. Accordingly, a mere expression of intention to do an act is not an offer to do it, and a general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer.

*Id.* at 539. Applying contract principles to the facts presented in *Rios*, we held that defense counsel's acceptance of the State's offer constituted formation of a plea agreement, even though the agreement had not been accepted by the court under Rule 4-243(c). *Rios*, 186 Md. App. at 370-72. Consequently, we vacated the circuit court's order denying enforcement of the plea agreement and remanded for further consideration. *Id*. at 372.

We emphasize that *Solorzano* and *Sifrit* concerned the interpretation of the terms of a plea agreement. But, as was the case in *Rios*, our task here is to determine whether a plea agreement was formed. Preliminarily, we note that although he mentions the word "reliance" in the title caption of his first argument, in his brief, Ames does not argue whether the doctrine of detrimental reliance applies to these facts. Nonetheless, we examine the doctrine to determine it potential application.

3. Detrimental Reliance

The Court of Appeals first considered the applicability of doctrine of detrimental reliance in contract actions in *Gittings v. Mayhew*, 6 Md. 113 (1854). Detrimental reliance, also called promissory estoppel, was originally a narrow exception to the consideration requirement to contract formation. *Pavel Enterprises, Inc. v. A.S. Johnson Co., Inc*., 342 Md. 143, 164 (1996). The early Maryland cases applying promissory estoppel or detrimental reliance primarily involved "charitable pledges gratuitous agencies and bailments, waivers, and promises of marriage settlement." Jay M. Feinman, *Promissory Estoppel and Judicial Method*, 97 Harv. L. Rev. 678, 680 (1984). In *Pavel Enterprises*, a case involving the possible application of detrimental reliance in construction bidding, the Court of Appeals saw an opportunity to clarify confusion about the applicability of the doctrine. Taking the definition of promissory estoppel found in the Restatement (Second) of Contracts § 90(1) (1979), the Court "recast [that definition] as a four-part test:"

> 1. a clear and definite promise;
> 2. where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee;
> 3. which does induce actual and reasonable action or forbearance by the promisee; and
> 4. causes a detriment which can only be avoided by the enforcement of the promise.

*Pavel Enterprises*, 342 Md. at 166.

Had Ames explicitly argued the applicability of detrimental reliance, we would have held the doctrine inapplicable to these facts. Using *Pavel Enterprises*' four-part test, we do not think Ames could meet three of the four requirements. First, the State, as the promisor, did not have a reasonable expectation that tendering a plea offer, by itself, would have induced Ames to have voluntarily waive his right to a speedy trial. We note that on

the second trial date, November 19, 2018, coincidentally the Hicks date, no judge was available. The court could have found good cause because no judge was available, but Ames' counsel preempted that finding by announcing that Ames had already signed a written Hicks waiver. In other words, the "detriment" of voluntarily waiving speedy trial could have been avoided by asking the court to find good cause to move beyond Hicks, but Ames chose not to do this. Finally, Ames' counsel did not announce that his speedy trial waiver was predicated on the State holding the offer open for a specific time. Significantly, Ames did not put the State or the court on notice that he was expecting the offer to remain open and that was why he was waiving his right to a speedy trial. Under these facts, Ames cannot meet elements 2 through 4 to prove detrimental reliance. Thus, had he properly raised such a claim, we would have rejected it.

While Ames does not explicitly argue detrimental reliance, instead he claims that the court's refusal to enforce the plea agreement constituted reversable error for two reasons: (1) Ames was denied the chance to "contemplate" the offer before the State rescinded it, and (2) because Ames was denied the chance to accept a plea, he did not knowingly waive Hicks. Consequently, Ames argues the trial court was required to make a good cause finding before it postponed the trial. As the court neglected to make that finding, the case should have been dismissed.

4. Ames did not accept the State's plea offer before it was withdrawn

In his motion for appropriate relief, Ames states that on November 14, 2018, after a series of email exchanges, the State made a plea offer. As Ames described it in his motion,

the offer was for Ames to plead guilty to Count 1: Second-Degree Child Abuse and in return, receive a sentence of 15 years, with all but 18 months suspended. Ames was free to ask for home confinement and a term of probation. Additionally, Ames was to register as a Tier III sex offender,[7] undergo sex offender examination and presumably follow any recommendations the evaluator made, and have no contact with S. P.

When the parties appeared for trial five days later, November 19, 2018, Ames had not accepted the State's offer. They were set for trial, but the assigned judge was unavailable. They went to another courtroom where the clerk called Ames' case as an "add-on" to the docket.

> THE CLERK: Now calling Add-on CT180696x, Maryland v. Dietrich Ames.
>
> * * *
>
> THE COURT: It is my understanding that this matter was – I guess, kind of lost in space for a moment in terms of it was supposed to be set for trial today but it wasn't on the docket, it was on the docket. Additionally, in the interim, the parties need time to contemplate a plea offer.
>
> [PROSECUTOR]: Offer has been extended.
>
> [AMES' COUNSEL]: Yes, Your Honor. That is correct.
>
> THE COURT: What is your Hicks situation?
>
> [AMES' COUNSEL]: I have a waiver here today as the Hicks state (sic), Your Honor. I have gone over it with my client. He understands what rights he is waiving, mainly with the statutory speedy trial right. I have gone over with him what that means and he wishes to do that.

[7] C.P. § 11-701(q)(1), and following subsections, confers Tier III sex offender status on those persons convicted of conspiring to commit, attempting to commit, or committing the common various degrees of sexual assault against a minor. CP § 11-707(4)(iii) requires a Tier III sex offender to register with local law enforcement in the community in which the offender lives for the balance of the registrant's life.

After the court examined Ames and was satisfied that he was voluntarily waiving his right to a speedy trial, the court learned that the State had a pending motion to dismiss. What raised the State's ire was that Ames had previously withdrawn motions filed under Rule 4-252(a).[8] Despite withdrawing motions, he filed a motion to suppress. The State's argument was that Ames should not have filed his suppression motion without first getting the court's consent, which he did not do. Ames believed he could file the suppression motion even though he had previously withdrawn all motions. The court asked the parties to return in two days to argue the State's motion to dismiss.

On that date, November 21, 2018, Ames' counsel argued that Ames' speedy trial waiver had been contingent on the State dismissing its pending motion to dismiss.

> [AMES' COUNSEL]: So, Your Honor, the reasons I asked you to withhold ruling [on the motion to dismiss two days ago] is there is some background information I wanted to talk to the State about before I kind of said it in open court. So, we had essentially worked out a plea.
>
> She is telling me today that that plea is not possible. Okay. I was prepared to go to trial on Monday [two days ago], and I have my full trial notebook here. I prepared all weekend.
>
> I just put my client through the cross and direct, and he was going to take the stand. And then we came to an agreement on the plea agreement. And she told me she was not going to pursue this motion to strike.

[8] (a) Mandatory Motions. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:
(1) A defect in the institution of the prosecution;
(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
(4) An unlawfully obtained admission, statement, or confession; and
(5) A request for joint or separate trial of defendants or offenses.

> And I considered that statement when I advised my client to waive Hicks, because I knew that the Judge wasn't here. I found that out later. So, we didn't have a Judge. I thought the Court may or may not find good cause to go over Hicks.
>
> So, in exchange I figured it was in my client's best interests to get his motions hearing in case the Court did not find good cause. So, that was part of the reasoning for why I waived Hicks at all.

Although counsel said, "[a]nd then we came to an agreement on the plea agreement," as will be seen, he later acknowledged that he had not accepted the offer before the State withdrew it.[9] Additionally, the court recognized that any "reliance" or "exchange" Ames' claimed was one-sided.

> THE COURT: Okay. Well, how is this – this aspect of your reliance[,] on your client's reliance in terms of waiving Hicks, how is this just coming into light today, because you would have known all this on Monday at the time when we continued the case?
>
> And at the time that [the prosecutor] raised the motion to strike it seems like that would have been the first thing that you would have said right then is, ["W]ait a minute. We just waived Hicks 30 seconds ago in reliance of [the prosecutor] not pursing this motion to strike. Now, she is pursuing it.["]

The court did not rule or otherwise comment on counsel's argument that the Hicks waiver was contingent on Ames' acceptance of a plea offer. After hearing counsels' arguments, the court permitted Ames to file a motion to suppress.

Three months later, on February 22, 2019, Ames filed a motion titled, "Motion for Appropriate Relief/Motion to Enforce Plea Offer, or in the Alternative, Dismiss the Case."

[9] At oral argument, Ames' appellate counsel also advocated for the enforcement of the State's offer, not the enforcement of the terms of a plea agreement.

The court set a hearing for March 8, 2019. Before the same judge who had presided on the two previous occasions, Ames' counsel explained that Ames waived his right to a speedy trial for two reasons: (1) to get a date to litigate the State's motion to dismiss and (2) "to think about the plea." But, counsel explained, before he could accept the offer, the prosecutor withdrew it.

> [AMES' COUNSEL]: Two days after he waived Hicks, the plea offer is revoked. My intent was to come back, speak with [the prosecutor] on the next motions date and explain why I thought the plea should be reinstated or to get the previous plea offer, which involved less jail time for a separate charge.
>
> THE COURT: Sir, let's slow down. You never accepted the plea offer?
>
> [AMES' COUNSEL]: Well, that's –
>
> * * *
>
> THE COURT: I'm very clear about this. In your own pleadings . . . I highlighted your language. ["]Defense counsel expressed an interest in accepting the plea outlined.["] And later on you say, ["T]he first reason was so that he could have time to consider the plea further. And the second reason, was so that we could set in a motion hearing on [a] late filed motion."[10]
>
> But you never formally accepted.

Although Ames' counsel argued that he was "obviously…behaving in reliance on the offers," the court rejected that theory and denied the motion to dismiss.

We conclude that the court did not abuse its discretion when it denied Ames' motion to enforce the plea offer. By Ames' own admission, for whatever reason, before he could

[10] See docket entry 57, Ames' Motion for Appropriate Relief, et al. The presiding judge seems to have underlined in blue ink both quotes from Ames' motion.

accept the offer, the State withdrew it. If the timeline that Ames outlines is correct, he had had between November 14, when the State made the plea offer and November 21, when they withdrew it, to have accepted. Up until the moment it is accepted, an offer is executory and may be withdrawn. *Cochran*, 398 Md. at 23. Although Ames' counsel may have believed he was waiving speedy trial in "exchange" for the State withdrawing its motion to dismiss and giving him time to accept (or reject) a plea offer, as we have discussed, the record shows that was not the case. As the court recognized, Ames' counsel did not put either of his "understandings" on the record. We find it significant that the same judge presided at all three of the preliminary hearings and had knowledge of what had transpired. We also note that upon hearing what the offer was, the court gave no indication that it would have accepted the plea agreement, a requirement under Rule 4-271(c).

Further, Ames' mistaken belief that waiving his right to a speedy trial was contingent on accepting a plea offer, did not invalidate his express waiver. The record reveals that on the morning of November 19, 2018, Ames knowingly and voluntarily waived his right to a speedy trial without reservation. What his counsel may have believed about the contingent nature of that waiver was not made known to the court or the State. We look to the objective circumstances surrounding the circumstances and observe nothing that would compromise the waiver's voluntariness. *Farinholt v. State*, 299 Md. 32, 40-41 (1984); *cf. Fowler v. State*, 18 Md. App. 37, 41 (1973). Consequently, Ames' argument that his waiver was invalid, is without merit.

Finally, Ames' argument about "fair play" is misplaced. "Fair play" is a term of art. It is used when determining whether one of the parties has complied with the terms of a plea agreement.

*Brockman*, *Sifrit* and *Solorzano*, all previously cited, involved whether a defendant had adhered to the terms of a plea agreement with the State. In *Brockman*, the issue was whether the defendant violated the terms of his plea agreement in which he was supposed to give a deposition and identify the mastermind behind a contract killing. The Court of Appeals concluded that Brockman's deposition testimony was consistent with the terms of the agreement. *Brockman*, 277 Md. at 696-97. Although *Brockman* was the first case in which the term "fair play" was used, *id.* at 697 ("We note that the standard to be applied to plea negotiations is one of fair play and equity under the facts and circumstances of the case…."), its application has focused on how the terms of a plea agreement should be interpreted, not necessarily an analysis of fairness of the negotiations between a criminal defendant and the State.

Looking at the other two cases that Ames cites illustrates the point. *Sifirt*, concerned whether Erika Sifirt violated the terms of a "Memorandum of Understanding" with the State not to prosecute her for murder, if she testified truthfully in the prosecution of her husband for the murder of two people. She had assured prosecutors she had not helped her husband dispose of the bodies of two people her husband had killed. 383 Md. at 69-70. After signing the agreement, the State claimed Sifirt violated the agreement's terms by making inculpatory statements. *Id*. at 89-90. The Court of Appeals held that Sifirt's "fair

play" argument was unavailing as she had patently breached the agreement by misleading the prosecution. *Id*. at 91.

And, Solozaro claimed that the trial violated the terms of his plea agreement by imposing an illegal sentence for murder. *Solozaro*, 397 Md. at 656-57. The Court of Appeals agreed with him, holding the trial court should have given Solozaro a sentence within the agreed upon rage of "12 to 20 years," rather than the life, suspend all but 50-year sentence the court gave him. *Id.* at 673-74.

In sharp contrast to those cases, here, there was no plea agreement. As stated, we rely on well-established contract principles to determine whether there was an agreement in the first instance. With no agreement to consider, we find no basis to apply the "fair play" standard, particularly when Ames offers us no rationale for applying the standard when a trial court is asked to enforce a plea offer. We decline to formulate such a rationale in this instance. Accordingly, we conclude that the court did not abuse its discretion in declining to enforce a plea offer in this case.

## II. The Court Did Not Abuse Its Discretion in Denying Ames' Motion to Dismiss for an Alleged Violation of his Right to a Speedy Trial

Ames argues that the circuit court erred in denying his motion to dismiss based on a supposed speedy trial violation. Ames acknowledges that he was on home confinement for one year and three months, or 15 months, prior to trial. Nonetheless, Ames claims that this delay is of "constitutional dimension," is presumptively prejudicial, and merits dismissal. The State, on the other hand, asserts that Ames only asserted his right to a speedy trial on March 19, 2019, after no judge was available on his third trial date. Reviewing the

*Barker* factors,[11] the State says that this delay cannot not be attributable to it. More importantly, the State argues Ames cannot show prejudice, as he was on home detention and was available to prepare for trial with counsel. In the State's opinion, the court did not abuse its discretion in denying Ames' motion to dismiss.

In reviewing whether an appellant's speedy trial right has been violated, we make our own independent constitutional appraisal. *Howard v. State*, 440 Md. 427 (2014); *Glover v. State*, 368 Md. 211, 220 (2002). But, "in so doing, we defer to the circuit court's first level findings of fact unless clearly erroneous." *Henry v. State*, 204 Md. App. 509, 549 (2012) (internal citations omitted).

The Sixth Amendment to the Constitution of the United States grants that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial[.]" U.S. Const. amend. VI. Similarly, Article 21 of the Maryland Declaration of Rights grants that, "in all criminal prosecutions, every man hath a right ... to a speedy trial[.]" And we have held that "[t]he speedy trial right under the Maryland Constitution is coterminous with its Federal counterpart and any resolution of a claim under the Sixth Amendment will be dispositive of a parallel claim under Article 21." *Erbe v. State*, 25 Md. App. 375, 380 (1975), *aff'd*, 276 Md. 541 (1976) (internal citation and quotation marks omitted).

We apply the four-factor balancing test articulated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972) to determine whether a defendant's constitutional right to a speedy trial was violated. *See Howard*, 440 Md. at 447. Those

[11] *Barker v. Wingo*, 407 U.S. 514 (1972).

factors are: (1) the "[l]ength of delay"; (2) the "reason for the delay"; (3) the "defendant's assertion of" his speedy trial right; and (4) "prejudice to the defendant." *Barker*, 407 U.S. at 530. We have stated before that "[n]one of these factors is, in itself, either necessary or sufficient to find a violation of the speedy trial right; instead, they are related factors and must be considered together with such other circumstances as may be relevant." *Nottingham v. State*, 227 Md. App. 592, 613 (2016) (internal citation and quotation marks omitted). There is no bright-line rule to determine whether a defendant's right to a speedy trial had been violated. We employ instead a balancing test where we weigh "the conduct of both the prosecution and the defendant." *State v. Kanneh*, 403 Md. 678, 688 (2008) (quoting *Barker*, 407 U.S. at 530).

**A. Length of the Delay**

The threshold issue when undertaking a Sixth Amendment speedy trial analysis is whether the length of the delay is presumptively prejudicial. *See Barker*, 407 U.S. at 530 (explaining that unless "there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."). For that reason, the length of delay plays a dual role "because a delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis." *Kanneh*, 403 Md. at 688.

We have explained that "[t]he arrest of a defendant, or formal charges, whichever first occurs, activates the speedy trial right." *Wheeler v. State*, 88 Md. App. 512, 518, (1991) (internal citation omitted). "[T]he length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." *Barker*, 407 U.S. at

530–31. Although the length of the delay is a factor to be considered in a speedy trial analysis, it is not, "in and of itself," "a weighty factor." *Glover*, 368 Md. at 225.

Ames was arrested in April 2018 after S.P.'s grandmother reported him to the police. Ames' first trial date, September 7, 2018, was postponed so that Ames could consider a plea offer. The State joined Ames in that postponement request. The next trial date was also the Hicks date, November 19, 2018. As discussed, on that date, no judge was available. Ames wanted to consider a plea offer and to prepare to litigate the State's motion to strike his suppression motion. As we have seen, on that date, Ames voluntarily waived his right to a speedy trial. The next trial date was March 19, 2019. No judge was available on that date, so trial was again postponed. Ames asserted his right to a speedy trial for the first time. Trial went forward on the next date, August 20, 2019. The time between arrest and trial is approximately 16 months.

We agree with both Ames and the State, a delay of one year is sufficient to trigger a speedy trial analysis. *Barker*, 407 U.S. at 530; *see also*, *Divver v. State*, 356 Md. 379, 389 (1999) ("Here the delay of one year and sixteen days raises a presumption of prejudice and triggers the balancing test."); *Brady v. State*, 291 Md. 261, 265 (1981) (determining that fourteen-month delay triggered analysis). Although the length of delay weighs in Ames' favor, standing alone, it is not a weighty factor. Rather, it is a factor to be "closely correlated to the other factors…." *Glover*, 368 Md. at 225.

**B. The Reason for the Delay**

The next step in the analysis is to examine the State's reason for a delay. Different weights are assigned to different reasons. *Henry*, 204 Md. App. at 550. For example, a

"deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government" while "[a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Kanneh*, 403 Md. at 960 (2008) (quoting *Barker*, 407 U.S. at 531).

The September 12, 2018 trial date was postponed at Ames' request so that he could consider a plea offer. That postponement is attributed to him. The November 19, 2018 and the March 19, 2019 trial dates were postponed because no judge was available. The Court of Appeals has held that the unavailability of a trial judge, while attributable to the State, is a neutral factor to be used in assessing a speedy trial claim. "The first factor - the unavailability of a judge - is clearly a neutral reason. While the State will be held accountable for this factor, it will not weigh heavily against the State." *Glover*, 368 Md. at 226 (internal citations omitted). Additionally, it is undisputed that on November 19, Ames wanted to consider a plea offer and prepare for a motions hearing and was not ready for trial. We conclude that the reasons for the delay are at best neutral, if not slightly more attributable to Ames.

**C. Defendant's Assertion of the Speedy Right**

The third *Barker* factor is the "defendant's responsibility to assert his right." *Henry*, 204 Md. App. at 554 (quoting *Barker*, 407 U.S. at 531). "Whether and how a defendant asserts his right is closely related to the other factors[.]" Barker, 407 U.S. at 531. The strength of a defendant's assertion, and not just its occurrence, may "indicate whether the

delay has been lengthy and whether the defendant begins to experience prejudice from that delay." *Glover*, 368 Md. at 228.

Ames asserted his right to a speedy trial on March 19, 2019. Approximately three months later, on June 21, 2019, he filed a motion to dismiss alleging that his case should be dismissed because of a speedy trial violation. While we weigh this factor in Ames' favor, in the absence of "any specific instance of impairment to his defense," we do not weigh it heavily against the State. *Hallowell v. State*, 235 Md. App. 484, 518 (2018).

**D. Prejudice**

As we have previously stated, "the most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice." *Henry*, 204 Md. App. at 554. In determining the degree of prejudice, we examine three interests supporting the right to a speedy trial: (1) preventing an oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired. *See Barker*, 407 U.S. at 532. The "most serious" of those three is "the last because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id*.

Before the trial began on August 20, 2019, the court heard on Ames' motion to dismiss. Ames argued why he felt each of the *Barker* factors favored dismissal. As to the fourth factor, prejudice, Ames' trial counsel noted that Ames had been on home confinement for a year. He also argued that Ames was subjected to "severe anxiety" because, in his counsel's opinion, the State had extended then withdrawn plea offers. Finally, counsel admitted that he could not "argue in good faith that our defense has been

impaired per se except for the fact that my client has a had to go through this for the last 17 months."

In his ruling on the motion to dismiss, the trial judge noted that Ames "candidly" admitted that he suffered no impairment in his ability to prepare his case for trial. As noted, that is the most "serious" of the three factors when calculating prejudice. Here, Ames's counsel admitted Ames could prepare for trial. We certainly understand the anxiety produced by an inability to come to a plea agreement, as well as angst over the pendency of the charges, however, Ames' could still adequately prepare to defend himself against serious charges of sexual child abuse. Further, while home confinement restricted his movements, those restrictions were a far cry from pre-trial confinement in a county-run detention center. We conclude that Ames did not suffer actual prejudice because of the delay.

**E. Balancing the Factors**

After consideration of the four *Barker* factors, we conclude that Ames was not denied his constitutional right to a speedy trial. While sixteen months from the date charges were filed and the trial date triggers the *Barker* analysis, that factor alone is not dispositive. The reasons for the delay, that on two occasions a judge was not available for trial, are neutral, at best. On at least one occasion, the reason for the delay may be directly attributable to Ames. Arguably, the second delay could be attributed to Ames because even if a judge was available, Ames asserted that he favored a postponement to contemplate a plea offer and to prepare to litigate motions. Ames asserted his right to a speedy trial five months prior to trial and several months after the trial date had been postponed twice

before. Finally, Ames admitted that the delay did not inhibit his ability to prepare for trial. After our independent review of the *Barker* factors and preforming our own balancing test, we cannot say that the court abused its discretion in denying Ames' motion to dismiss for alleged violation of his right to a speedy trial.

### III. The Court Did Not Abuse Its Discretion in the Conduct of Det. Visbal's Direct Examination

Finally, Ames maintains the circuit court committed reversable error in not permitting him to ask leading questions during his direct examination of Detective Michael Visbal. As a result, Ames claims his questioning "was rendered useless" and "was not effective." In his brief, Ames provides us transcript excerpts of how the examination proceeded, with examples of how he believes the examination should have unfolded. The State maintains that the circuit court did not abuse its discretion in limiting Ames' trial counsel to non-leading questions. According to the State, Det. Visbal was not "hostile" in answering defense counsel's questions, thus the court properly restricted counsel from asking leading questions.

The examination of witnesses at trial and control over a witness' testimony are left to the discretion of the trial judge. *Oken v. State*, 327 Md. 628, 669 (1992), *cert. denied*, 507 U.S. 931 (1993); *Trimble v. State*, 300 Md. 387, 401 (1984), *cert. denied*, 469 U.S. 1230 (1985). We shall not disturb a trial court's discretionary decision "'except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Jarrett v. State*, 220 Md. App. 571, 584 (2014) (quoting *Bazzle v. State*, 426 Md. 541, 549 (2012)).

Maryland Rule 5-611(c) specifically addresses leading questions, stating that "[o]rdinarily, leading questions should be allowed ... (2) on the direct examination of a hostile witness, ...." *See generally,* Lynn McLain, Maryland Evidence, State and Federal, § 611:3 (June 2018 update)("leading the witness on a material point is a tool to be used by the party with whom the witness is expected to be less cooperative"); Kenneth S. Broun and Robert P. Mosteller, McCormick on Evidence, § 6 (7th ed., 2016 update)(if witness on direct "is legally identified with the opponent, appears hostile to the examiner, or is reluctant or uncooperative, the danger of suggestion disappears. In these circumstances, the judge will permit leading questions."); Barbara E. Bergman & Nancy Hollander, Wharton's Criminal Evidence, § 8:15 (15th ed. 1998) (Leading questions on direct examination are permissible "when the witness is hesitant, evasive, reluctant, adverse, or hostile."). The permissibility of leading questions is within the sound discretion of the trial judge and shall not be overturned on appeal unless there has been such an abuse of discretion as to prejudice the defendant's right to a fair trial. *Hubbard v. State,* 2 Md. App. 364 (1967), *cert. denied,* 393 U.S. 889 (1968).

During the trial, the State declined to call Det. Visbal in its case-in-chief, even though he was the lead investigating officer. Apparently, Ames' counsel believed that the State was going to call him as a witness and was surprised that they were not, denouncing the decision as "just a dirty trick." After the court discovered that Det. Visbal was present in the courthouse, Ames called the detective as his first witness.[12] Shortly after Ames'

[12] At oral argument, counsel asserted that the detective was outside the trial courtroom.

counsel began his examination, the following exchange took place:

> [AMES' COUNSEL]: You guys work hand and (sic) hand with the State's Attorneys[?]
>
> [DET. VISBAL]: Yes.
>
> [AMES' COUNSEL]: You don't work –
>
> [PROSECUTOR]: Objection to the leading, Your Honor.
>
> [AMES' COUNSEL]: It's an adverse witness.
>
> THE COURT: Well, the objection is sustained. He is your witness.
>
> [AMES' COUNSEL]: Could we approach, please?
>
> THE COURT: No.
>
> [AMES' COUNSEL]: Your Honor, he is an adverse witness. Your Honor …
>
> THE COURT: I have ruled. Ask nonleading questions.

Later, defense counsel asked Det. Visbal about who had submitted the forensic results of S.P.'s sexual assault exam to the police crime lab. Although Det. Visbal's initials were, apparently, on a chain of custody report, he did not recall if he submitted the report or whether his partner did. At a bench conference, the following colloquy occurred:

> [AMES' COUNSEL]: At this time I am asking for permission to treat this witness as hostile.
>
> [PROSECUTOR]: Your Honor --
>
> THE COURT: What has he done that's been hostile?
>
> [AMES' COUNSL]: He just keeps saying he doesn't remember, but he does remember.
>
> THE COURT: How do we know that?

> [AMES' COUNSEL]: If I could lead him we would get to the bottom of this very quickly.
>
> THE COURT: What is get to the bottom of this?
>
> [AMES' COUNSEL]: The bottom of this is that he collected all the evidence he submitted to the crime lab, and he got the results.
>
> [PROSECUTOR]: But he --
>
> THE COURT: Wait a minute.
>
> Didn't he just say if you showed him the chain of custody he will tell you the answer to all those questions?
>
> I thought that's what he just said. Do you have it [the chain of custody form]?
>
> [AMES' COUNSEL]: I do.
>
> THE COURT: Why don't we just do that?

Counsel returned to their respective tables, but Ames' counsel did not ask Det. Visbal about the chain of custody report. Instead, he focused on a cell phone the police had seized from Ames after his arrest.

After reviewing both colloquies and the entire transcript of Det. Visbal's testimony, we are hard-pressed to see how the court abused its discretion in either instance that Ames cites. In the first exchange, it is difficult to tell whether the fragment of a question defense counsel posed was leading or not. Regardless, there was nothing in Det. Visbal's answers that reflected he was unwilling to answer counsel's questions or was being evasive. We think the trial judge was correct in asking what the detective said or did that could have been considered hostile. In the second exchange, the trial judge was again correct. Det.

Visbal was not being evasive; he simply could not recall whether he or someone else had put the sexual assault report in the evidence locker. Showing him the chain of custody form might have answered that question, but the transcript reveals that rather than use the chain of custody form to refresh the detective's memory (or impeach him), Ames' counsel turned his attention to the cell phone that the police seized from Ames. Again, we do not see how the court limited Ames' counsel in pressing the detective on any issue he deemed relevant.

Finally, even if the trial court erred not allowing leading questions, any error was harmless beyond a reasonable doubt. "Every error committed by a trial court is not grounds for a new trial. Reversible error will be found and a new trial warranted only if the error was likely to have affected the verdict below.... If [the error] is merely harmless error, [then] the judgment will stand." 5 Lynn McLain, Maryland Evidence § 103.22, at 49 (emphasis added); *see also Dorsey v. State*, 276 Md. 638, 647 (1976) (stating the same proposition); *Conyers v. State*, 354 Md. 132, 160-61 (1999).

Our review reveals that Ames' counsel had ample opportunity to examine the detective and proceeded with his case as he wished. Regardless who sent the sexual assault exam to the evidence locker, the most important fact was that Ames' DNA was not on any of the evidence collected from S.P. The jury heard that fact. Ames testified and offered his version of what transpired between him and S.P. With a dearth of physical evidence, it seems that the trial came down to who the jury believed: S.P. or Ames. Judging from the verdict, it appears that the jury found S.P. to be more credible. Finding no reversible error, we affirm.

**THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.**

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1984s19cn.pdf