Circuit Court for Wicomico County
Case No. K150454

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 325

September Term, 2016

HARRY SOLOMON JONES

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 3, 2017

On February 10, 2016, a jury in the Circuit Court for Wicomico County convicted Harry Solomon Jones, appellant, of two counts of first degree sex offense, two counts of second degree sex offense, false imprisonment, first degree assault, second degree assault, unnatural and perverted practice, reckless endangerment, and wearing or carrying a dangerous weapon with intent to injure. On April 7, 2016, the court sentenced appellant to 35 years on one conviction for first degree sex offense, 25 years, consecutive, on the other conviction for first degree sex offense, and 5 years, concurrent, for the false imprisonment conviction. All other counts merged for sentencing purposes.

On appeal, appellant presents the following two questions for this Court's review:

1. Did the circuit court err in denying the motion to suppress appellant's statements to the police?
2. Was the evidence sufficient to support appellant's convictions of first degree sexual offense?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The victim, M.S., testified that, for a three-day period in June 2015, appellant imprisoned her in his Salisbury home and subjected her to repeated physical and sexual assaults.[1] She testified that, on June 13, 2015, she talked to appellant on the phone. He was upset about his breakup with the victim's daughter, approximately two months earlier, and "he needed a shoulder to cry on." The victim agreed to go to appellant's house and have a "friendly talk."

[1] We will refer to the victim by her initials in this opinion.

Appellant picked up the victim at approximately 10:00 p.m. and drove her to his house. As soon as the victim stepped into appellant's house, he struck her in the head with a crowbar, and she lost consciousness.

When the victim regained consciousness, she found herself on appellant's couch, bound with zip ties around her hands and ankles. The zip ties were tight enough that they indented into her skin and caused her hands to swell. The bindings also caused blisters from the rubbing. Appellant then demanded that the victim perform oral sex on him. He dropped his pants and pushed the victim's head toward his penis. She protested, but he stated that he would hurt her if she did not do what he asked. Appellant then struck the victim in the face "really hard" with his hand, which caused her ears to start ringing. The victim was scared and felt that she "had no choice" but to comply. Appellant "inserted his penis into [the victim's] mouth," and "within a couple of minutes, he ejaculated" onto her face, neck, and tank top. Appellant then sat down in a chair and proceeded to watch television as if nothing had happened.

Several hours later, appellant asked the victim to get into bed with him. The victim refused, so appellant gave her pillows and a blanket, and she spent the night on the couch. Appellant did not unbind her.

The next morning, appellant left the house for approximately one hour. He made the victim lie in the bathtub, placed a sock in her mouth, and covered her mouth with duct tape.

Approximately 24 hours after the ordeal began, appellant removed the victim from the bathtub and placed her in a chair. She asked him if he would let her go, and he responded that he would let her go when she gave him information about her daughter. He wanted to know where her daughter lived, what kind of car her daughter's boyfriend drove, and other information. Appellant then forced the victim to perform oral sex on him again.

The victim testified that appellant repeated this routine several times, moving her between the bathtub and the chair or couch, all while demanding information about her daughter. He periodically adjusted her bindings, using various bits of rope, wire, and "hangers," in addition to the zip ties, to ensure that she would not escape. Appellant put her in the bathtub approximately eight or nine times over the course of her captivity, and she was forced to perform oral sex on appellant six or seven times. At one point, appellant threatened to tie her to a tree behind his house and leave her in the heat "where nobody [would] be able to find [her], ever."

This continued until the morning of June 16, when the victim escaped. That day, appellant stated that he was going to the grocery store. He told her that she had to get back into the bathtub, but when he returned, they could "work out a deal," and he would pay her $250 per week if she would not report him to the police. The victim agreed so he would let her go. Appellant then put the victim back into the bathtub, but this time, he cut off some of the bindings around her legs. Appellant did not remove the bindings around her ankles, however, and he also left her arms tied to her neck.

After appellant left the house, the victim managed to get herself out of the bathtub. She found a pair of wire cutters, used them to cut off some of her bindings, and then ran out the front door.

The victim subsequently encountered a passing motorist and her passenger, who stopped to aid her. They both testified at trial that they observed the victim standing near the road waving her arms. She was disheveled, distraught, and had ropes and zip ties around her neck, wrists, and ankles. They called 911 and drove the victim to another location.

Detective William Oakley, a member of the Wicomico County Sheriff's Office, was dispatched to their location. The victim was extremely distraught, disheveled, and crying hysterically. She had zip ties around her neck and on her wrists, and she was holding a rope.

The victim testified that she told Detective Oakley that she had "been held hostage for four days with nothing to eat," and she had been raped, sodomized, and "made to do oral sex." She told the detective who did these things and where that person lived.

When paramedics arrived, they also observed that the victim had ties around her neck and wrists. One paramedic testified that the victim had "what appeared to be . . . burn marks, like blistering" on her wrists and ankles. Although some of the zip ties on the victim's body were loose, the paramedic had to cut off one of the zip ties because "her hand was so swollen around it, and it was so tight."

After the victim was transported to the hospital by ambulance, Detective Oakley and another officer drove to appellant's house. Detective Oakley approached appellant and asked his name. When appellant identified himself, the officers placed him in handcuffs and put him in a chair that was outside. Detective Oakley then entered appellant's residence "to make sure no one else [was] in there." During this protective sweep, Detective Oakley noted that there was a blanket in the bathtub and zip ties in other places in the house.

A qualified forensic nurse examiner performed a sexual assault examination on the victim while she was at the hospital. The nurse observed bruising on the victim's thigh, under her breasts, and on her chest. She also observed abrasions and blisters on her wrists, and a foreign substance on her face that resembled adhesive tape residue. During the examination, the victim "complained of some tenderness to the back of her neck, where her hairline meets her neck," but the hospital staff "did not find any bruising or swelling there." The nurse explained that they do not always find bruising or swelling after an injury. The hospital performed a CT scan of the victim's head; the results were negative as to any injury or abnormality.

On June 17, 2015, the police executed a search warrant on appellant's residence. They discovered, among other things, zip ties, some of which were found in the bathtub, rope, metal "clothes hangers that were fashioned into ties," a piece of duct tape attached to a sock, and a crowbar, which was found hidden under a mattress.

The evidence collected from appellant's home and the sexual assault examination was submitted to the Maryland State Police forensic laboratory. A forensic scientist processed swabs of the victim's neck and tank top, and she found sperm and DNA matching appellant's profile.

The scientist also tested swabs from the sock, which tested positive for amylase, a component of saliva, and matched the victim's profile. The scientist agreed that the presence of amylase would be consistent with "a sock being put in somebody's mouth."

Appellant testified at trial, providing a different version of events. He testified that, on June 13, 2015, the victim texted him, asking if he would "bring her some pills." At approximately 9:30 p.m., appellant went to pick up the victim from her mother's house. When he arrived, appellant waited as the victim went next door to her cousin's house to purchase some cocaine. After she "did her deal," she got into appellant's car, and they drove to several stores to buy food and cigarettes.

Appellant and the victim arrived at appellant's house at approximately 10:45 p.m. Appellant testified that he held the door for the victim, and when they were inside, he got her a plate and a razor blade to prepare some cocaine. He cut a straw for her, and she snorted some cocaine. Appellant did not partake because he regularly took prescription pain medication, and "they [would] urine test [him]."

Appellant and the victim then decided to play cards. While they were playing, she asked him if he "still had the handcuffs," which he usually kept in the same drawer as the cards. Appellant replied that the victim's daughter made him throw them away. The victim

then asked him about some "ties" that were in a green satchel near his chair. She "got one of the ties and put one on [his] hand," which appellant "didn't like." She then "put one on her wrist and one on [his] wrist and two of them together on her legs." The victim then "took off her blouse and her pants and panties and got down on the floor and wanted [appellant] to spank her" and "to ride her back like a horse." Appellant explained that it "didn't feel right," and he "didn't want to do [that] anymore." "She then put her hand on [appellant's] privates and started touching [him]," which made him uncomfortable. She told him to "come to the couch" and started taking off his pants. The victim then performed oral sex on appellant. After he ejaculated, the victim "went into the bathroom and washed up."

After the victim cleaned up, her daughter called, and the victim answered. When she got off the phone, she wanted to "do more sex." Appellant "wanted to get out of the situation," so he "told her to put her clothes on" and said that he did not feel comfortable.

Appellant and the victim then sat and talked until approximately 4:30 a.m. The victim consumed more cocaine before going to sleep. Appellant gave the victim a comforter and three pillows, and she slept on the couch while he slept in his bed.

When appellant awoke the next morning, he discovered that the victim had tied him up with straps while he was sleeping. She was on top of him giving him fellatio. Initially, he was sleepy and thought it was someone else. Once he was fully awake, however, he asked the victim to stop. She did not stop, but "[i]t felt good," so he "didn't say stop no [sic] more."

After the victim finished performing oral sex, appellant used some cutters from his tool bag to cut the straps off of himself. He also cut the straps off of the victim's hands and feet, which he claimed she put on herself. The victim then "backed up two steps and passed out on the couch."

At some point that day, appellant went to take his pain medication, and he noticed that approximately half of his pills were missing. Appellant woke up the victim and accused her of taking the pills. They began to argue, and after approximately 30 to 45 minutes, appellant and the victim got into his truck to drive her back to the shelter where she was staying. He stated that he had been generous with the victim, but after he discovered that his pain medication was missing, he "wanted her out of [his] house" because he could not trust her anymore.

While appellant and the victim were arguing in his truck, he threatened to report her drug use. The victim then threatened him with "the same thing [she was] accusing him of" at trial. Appellant dropped the victim off at the shelter, and she did not return to his residence. Appellant denied tying her up, hitting her, or forcing her to do anything.

On cross-examination, the prosecutor asked appellant about his encounter with the police at his residence and his interview at the police station. Appellant testified that he recalled telling one of the officers at his residence that he had been away from home that whole day, but he denied, *inter alia*, telling the detectives at the police station that he would have no reason to keep the victim captive in his house when he could just tie her to a tree in the woods behind his house.

Additional facts will be added as necessary in the discussion that follows**.**

DISCUSSION

I.

Appellant's Statements

Appellant contends that the circuit court abused its discretion in denying his motion to suppress the statements he made at the police station approximately 12 hours after his arrest. He makes two arguments in this regard. First, he argues that the State failed to comply with the requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966), because the initial *Miranda* warnings given to him by Detective Oakley when he was arrested, 12 hours before he was questioned, did not properly advise him of his right to counsel. Second, appellant asserts that his confession was not voluntary because he was detained in a holding cell for approximately 12 hours in violation of Maryland Rule 4-212(f)(1), which requires that a defendant "be taken before a judicial officer . . . without unnecessary delay and in no event later than 24 hours after arrest."

The State argues that, because appellant did not raise the same arguments below that he asserts on appeal, appellant's claims are not preserved for this Court's review. In any event, the State argues that appellant's claims are without merit because the *Miranda* warnings given were not deficient, and under the totality of the circumstances, his "statement was given freely and voluntarily."

A.

Standard of Review

"When reviewing the denial of a motion to suppress, the record at the suppression hearing is the exclusive source of facts for our review." *Darling v. State*, 232 Md. App. 430, 445 (2017). *Accord Raynor v. State*, 440 Md. 71, 81 (2014) ("In reviewing the denial of a motion to suppress evidence . . . 'we must rely solely upon the record developed at the suppression hearing.'") (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)). We consider the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the party prevailing on the motion, in this case, the State. *Barnes v. State*, 437 Md. 375, 389 (2014); *Grimm v. State*, 232 Md. App. 382, 396 (2017). Ordinarily, we give great deference to a hearing judge's factual findings, and we will not disturb them unless they are clearly erroneous. *Henderson v. State*, 416 Md. 125, 144 (2010); *Darling*, 232 Md. App at 445. We review the motions court's factual findings for clear error, but we make our own independent constitutional appraisal of the record, "reviewing the relevant law and applying it to the facts and circumstances of this case." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010). *Accord Moore v. State*, 422 Md. 516, 528 (2011).

B.

Proceedings Below

At the suppression hearing, appellant attempted to suppress his statements to Trooper James Brant at the police station. These statements included the following response to the question whether he held the victim captive: "[W]hy would he keep [her]

tied up in his house when he could just take her into the woods behind his house and tie her to a tree and no one would ever find her."

Detective Oakley testified at the suppression hearing that he went to appellant's residence on June 16, 2015, at 5:24 p.m. He placed appellant in handcuffs and sat him in a chair in the front yard. Detective Oakley did not have to use any force against appellant, who was "surprisingly calm."

Detective Oakley did not ask appellant any questions during the encounter at appellant's residence. After appellant was placed in the chair, however, appellant stated that "he went to Kentucky Fried Chicken . . . [and] had just returned." Detective Oakley then "Mirandized" appellant, testifying that he recited from memory as follows:

> I advised him he had the right to remain silent. Anything he said could be used against him in a court of law. He had the right to an attorney, to have him or her present while he's being questioned, and if he cannot afford to hire an attorney one would be appointed to represent him. And if he chose to answer my questions he could stop answering them at any time.

On cross-examination, Detective Oakley conceded that, when he gave appellant his *Miranda* warnings, he did not tell him that an attorney would be appointed to him "before any questioning."

Appellant indicated that he understood his rights and said: "[G]o ahead and ask, ask me a question." Appellant continually asked to know "what's going on," and Detective Oakley told appellant to "hold on and someone [would] be [t]here to talk to him in a bit." Detective Oakley did not ask him any questions. He did note, however, that

appellant was sweating profusely, and that his shirt was "soaking wet." Detective Oakley recalled that appellant stated that he "had been cutting grass all day."

After appellant was arrested, Corporal Jeff Melvin, a member of the Wicomico County Sheriff's Office, transported appellant to the police station. Appellant was placed in a holding cell, which was approximately six feet by eight feet and included a sizeable metal bench, a toilet, and sink. The temperature was not particularly offensive to Corporal Melvin's sensibilities, and blankets were available upon request.

Trooper Brant testified that he interviewed appellant on June 17, 2015, at approximately 5:42 a.m. Prior to the interview, appellant was provided a sandwich and a bottle of water. The interview room was approximately six feet by six feet, and it had a blanket, which appellant used during the interview. Trooper Brant stated that no promises, inducements, or threats were made to appellant, nor did anyone use any force on him. Trooper Brant was unarmed.

Trooper Brant advised appellant of his *Miranda* rights when he entered the room, and he used a police advice of rights *Miranda* form. Included on this form is the following admonition: "You have the right to talk to a lawyer before answering any questions and to have a lawyer present at any time before or during questioning." Trooper Brant "read the form in its entirety," and he asked appellant if he understood. Appellant said: "Yes, he understood." Trooper Brant asked appellant if he would sign the advice of rights form to signify that he understood, but appellant refused. Trooper Brant again asked appellant "if

he understood everything that [the Trooper] read on the form, and [appellant] said yes, he understood everything that was read on the form and understands his rights."

At that point, appellant asked why he was being arrested and interviewed. Trooper Brant informed him that the victim had accused him of kidnapping her. He then began to question appellant in a steady and moderate tone. The interview continued for approximately 20 to 30 minutes, until appellant said that he wanted to speak to an attorney. Trooper Brant then terminated the interview and left the interview room.

During the interview, appellant was cooperative; he was not irritated or agitated. All of the statements that appellant provided were made after Trooper Brant read appellant the advice of rights form, but before appellant invoked his right to counsel.

On cross-examination, Trooper Brant testified that appellant was not interviewed until approximately 12 hours after his arrest because they had "other issues to attend to in terms of search warrants, other interviews, things of that nature." When asked why he did not have an audio recorder on the interview room table, Trooper Brant stated that he believed that the audio recording equipment in the interview room "would suffice," and he was unaware that it was not working when he conducted the interview.[2]

In arguing that the statements made at appellant's house should be suppressed, defense counsel argued that the State failed to show a valid *Miranda* waiver of rights. In

[2] The record indicates that the police captured a video recording of appellant's interview, but for reasons not explained, the audio was not recorded. A repairman subsequently was contacted to check the equipment, but the repairman noted on an invoice that the sound was working when he arrived.

that regard, counsel argued that Detective Oakley's *Miranda* warnings were defective because he failed to inform appellant that an attorney would be appointed "before any questioning." With respect to the statements appellant gave at the police station, counsel argued that, although Trooper Brant read the advice of rights form, there was nothing "to suggest that [appellant] understood his rights or waived his rights to a lawyer." Moreover, because of the lack of audio recording, "we couldn't hear [appellant's] response." Counsel contended that the State wanted the court to believe that appellant "understood everything, he was cooperative, but he just wouldn't sign [the form], therefore we should believe the officer," but there was no evidence to corroborate the officer's testimony and "nothing on [the] Miranda form to suggest that [appellant] understood his rights or that he waived his rights to a lawyer." Counsel stated that the *Miranda* waiver given to Detective Oakley did not "hold for the rest of all the interrogation."

Defense counsel then asserted that the circumstances, including the lack of audio recording, appellant's refusal to sign the advice of rights form, and the absence of testimony from other officers who were present during the interview "make it suspicious [as to] whether or not [appellant] voluntarily spoke to that officer, voluntarily waived his right to a lawyer." Counsel contended that there was "nothing indicating, except an officer saying it, that [appellant] waived his right to a lawyer, and a lot of stuff showing that he was interrogated under circumstances which, quite frankly, . . . are pretty unusual in this county where you sit there for twelve hours." Counsel noted that "[s]omebody could have talked to [appellant] or taken him to a commissioner, and then tried to interrogate him, but

we know why that doesn't happen because then the commissioner tells them about a lawyer and then they say I want a lawyer." Counsel argued that the circumstances indicated that appellant did not voluntarily waive his right to a lawyer.

The State argued that appellant was provided his *Miranda* warnings by Detective Oakley at his residence, and again by Trooper Brant. After appellant acknowledged that he understood his rights, he implicitly waived them when he agreed to speak with Trooper Brant. The State argued that, pursuant to Maryland case law, waiver of a defendant's rights can be inferred by his or her actions, even if he or she refuses to sign a waiver form. The State asserted that, under the totality of the circumstances, appellant's waiver was voluntary.

The circuit court agreed with the State. It concluded that Trooper Brant read the Miranda advice of rights form "in full," and when appellant started to answer the trooper's questions, he was waiving his rights.[3] The court discussed the voluntariness of the statements given at the police station as follows:

> [T]here was nothing threatening about the interrogation room. It wasn't an overly long interrogation. The trooper was present, as was a representative from the Sheriff's Office, in the room. . . . [T]here was no trickery involved in the questioning, no inducement given to [appellant], he seemed to be conversing freely, he was able to eat freely, he was not in mental or physical distress, he had not been assaulted, he was not physically mistreated.
>
> I just simply can't find anything about the circumstances of the interrogation to be of concern.

[3] The court found that appellant was not being interrogated when he was detained at his home, and therefore, *Miranda* was not implicated at that time.

> He was wrapped in a blanket because, maybe he was cold, I don't know, but it didn't interfere with his ability to converse and interact with the deputy. And I'm not persuaded by that or by the length of time between when he was taken to the facility and then questioned, that that, [sic] added to the facts, somehow make it impermissible or worthy of suppression.
>
> * * *
>
> The interplay between [appellant] and the conduct of the police, it seemed to be, with the trooper it seemed to be very professional, very easy, [appellant] didn't seem to be threatened, he seemed to talk freely. So I don't find -- first, I find that the Miranda was properly given, there was no violation of Miranda. And, secondly, I find under the totality of the circumstances that the statements made were voluntarily and, therefore, the motion to suppress as to those statements is also denied.

The prosecutor then noted that he thought that the court had "to find on the record that he knowingly and voluntarily waived Miranda." The court then stated:

> What happened was, Trooper Brant read the whole statement to him, and then the questioning started, and [appellant] just answered and engaged in a conversation for over 20 minutes, 25 or so. So I do find that means that he knowingly, intelligently, and voluntarily waived his rights under Miranda and voluntarily made the statements.

C.

Alleged *Miranda* Violation

As indicated, appellant contends that the statements he made at the police station were not taken in compliance with *Miranda*. In support, he argues that Detective Oakley's *Miranda* warnings were deficient, and because he was not properly informed during the 12 hours that he was in the holding cell that he was entitled to speak to counsel before any interrogation, his subsequent interview was conducted in violation of *Miranda*.

The State contends that this issue is not preserved for this Court's review because appellant did not argue below that any deficiency in Detective Oakley's *Miranda* warnings required suppression of his subsequent statement at the police station. We agree.

Maryland Rule 8-131 provides that, "[o]rdinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." The Court of Appeals has explained the purpose of this rule as follows:

> "(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation."

State Bd. of Elections v. Libertarian Party, 426 Md. 488, 517 (2012) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)). *Accord Bryant v. State*, 436 Md. 653, 659 (2014) ("Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings."); *White v. State*, 324 Md. 626, 640 (1991) (argument not made to the trial court is not properly before the appellate court); *Leake v. Johnson*, 204 Md. App. 387, 406 (2012) ("Ordinarily, an appellate court will not decide an issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'") (quoting *General Motors Corp. v. Seay*, 388 Md. 341, 362 (2005)).

Here, appellant argued below that the circumstances indicated that he did not understand his *Miranda* rights or voluntarily waive them when he agreed to speak with Trooper Brant. With respect to Detective Oakley's previous *Miranda* warnings, he argued

that they should not "carry over" to the next day and cure any *Miranda* waiver issues that purportedly arose during the subsequent interview.[4] Because appellant did not raise below the argument he raises on appeal, appellant's *Miranda* claim is not preserved for this Court's review.

In any event, even if the issue was preserved for this Court's review, we would conclude that it was without merit. Appellant argues that Detective Oakley's allegedly deficient *Miranda* warnings deprived him of a "meaningful opportunity" to speak to an attorney *before* interrogation. The record belies that contention.

Trooper Brant advised appellant, *before* any questioning, that he was entitled to speak to a lawyer *before* and during questioning. Appellant indicated that he understood his rights. Accordingly, even if appellant's claim was preserved, we would conclude that the circuit court did not abuse its discretion in denying appellant's motion to suppress his statements on the ground that he was not properly advised of his *Miranda* rights before questioning.

D.

Voluntariness of Statement

Appellant next contends that his confession was not voluntary because he was detained in a holding cell for approximately 12 hours, in violation of Maryland Rule 4-212(f)(1), which requires that a defendant "be taken before a judicial officer . . . without

[4] As indicated, appellant also argued below that the statements that he made at his home to Detective William Oakley should have been suppressed because he was not properly *Mirandized*. He does not raise this claim on appeal.

unnecessary delay and in no event later than 24 hours after arrest." The State contends that this issue also is not preserved for this Court's review. Again, we agree with the State.

Initially, we note that we found no place in the record where defense counsel even mentioned Rule 4-212(f). Counsel's argument that appellant's waiver of his *Miranda* rights was not voluntary included the following assertions: (a) he was not properly advised of his rights; (b) he did not properly understand them; and (c) there was insufficient evidence to show that appellant waived his rights. Counsel did note that it was unusual for a defendant to sit for 12 hours in a holding cell, and someone should have presented him to a commissioner because the commissioner would have advised appellant of his *Miranda* rights. Defense counsel did not argue, however, that appellant's 12-hour detention without counsel rendered his statements involuntary. In short, we agree with the State that the claim raised by appellant on appeal was not sufficiently presented to the circuit court, and therefore, the argument is not preserved for this Court's review.

In any event, even if appellant's claim was preserved, we would nonetheless conclude that it is without merit. In Maryland, a confession may be admitted against an accused only when it has been "determined that the confession was '(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*.'" *Ball v. State*, 347 Md. 156, 174-75 (1997) (quoting *Hof v. State*, 337 Md. 581, 597 (1995)), *cert. denied*, 522 U.S. 1082 (1998). *Accord Knight v. State*, 381 Md. 517, 531-32 (2004);

Smith v. State, 220 Md. App. 256, 273 (2014), *cert. denied*, 442 Md. 196 (2015). "[T]he burden of proving the admissibility of a challenged confession is always on the State." *Smith v. State*, 186 Md. App. 498, 519 (2009), *aff'd*, 414 Md. 357 (2010).

In assessing voluntariness, the Court considers the totality of the circumstances, which includes the following relevant factors:

> [W]here the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given *Miranda* warnings; the mental and physical condition of the defendant; when the defendant was taken before a court commissioner following arrest; and whether the defendant was physically mistreated, or physically intimated or psychologically pressured.

Bellard v. State, 229 Md. App. 312, 350 (2016), *aff'd*, 452 Md. 467 (2017). *Accord Hof*, 337 Md. at 596-97.

As indicated, appellant's argument involves the delay before he was taken to a court commissioner. Maryland Rule 4-212(f) provides, in pertinent part, that, "[w]hen a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest."

As noted by the State, the Maryland General Assembly has made clear that a failure to comply with Rule 4-212(f) does not automatically render appellant's confession involuntary. Maryland Code (2013 Repl. Vol.) § 10-912 of the Courts and Judicial Proceedings Article provides that a violation of Maryland Rule 4-212(f) shall be only "one factor" and not the sole basis for excluding a confession:

> (a) A confession may not be excluded from evidence solely because the defendant was not taken before a judicial officer after arrest within any time period specified by Title 4 of the Maryland Rules.
>
> (b) Failure to strictly comply with the provisions of Title 4 of the Maryland Rules pertaining to taking a defendant before a judicial officer after arrest is only one factor, among others, to be considered by the court in deciding the voluntariness and admissibility of a confession.

Accord Williams v. State, 375 Md. 404, 415 (2003) (rejecting the argument that any unnecessary delay in presentment required suppression per se, noting that "[t]he test under the statute, and under the Constitution, remains voluntariness").

The Court of Appeals has explained, however, that if the purpose of any unnecessary delay in presentment is to obtain incriminating statements, that circumstance is to be given "very heavy weight" when "determining the overall voluntariness of the confession. Obviously, the longer any unlawful delay, the greater is the weight that must be given to the prospect of coercion." *Id.* at 433.

This Court has made clear that not all delay is prohibited. Some delays are necessary, such as delays for purposes of "reasonable routine administrative procedures," determining whether a charging document should issue, verifying the commission of the crime itself, obtaining information in order to avert harm to persons and loss of property, and discovering the identity or location of other persons involved, or in preventing loss or destruction of evidence. *Odum v. State*, 156 Md. App. 184, 202 (2004). Delays for these purposes do not violate Rule 4-212 or weigh against voluntariness. *Id.*

With respect to delays that are unnecessary, the weight to be given to the delay varies. "Class I" delays, those "not for the sole purpose of custodial interrogation," are not

weighed heavily in the overall analysis. *Id.* at 203. "Class II" delays, those occasioned "deliberately for the sole purpose of custodial interrogation," should be weighed "very heavily" against voluntariness. *Id.*

Here, the only explanation as to why appellant was not interviewed until approximately 12 hours after his arrest was Trooper Brant's testimony that they had "other issues to attend to in terms of search warrants, other interviews, things of that nature."[5] Regardless of whether we classify these delays as "necessary," we conclude that they were not for the "sole purpose of custodial interrogation," and therefore, do not weigh "very heavily" against voluntariness. Moreover, as noted above, the delay is only one of several factors in the analysis, and there is no contention that any of the other factors weigh against the conclusion that appellant's statements were voluntary. As noted by the circuit court, appellant was provided food, water, bathroom facilities, and a blanket. There is no allegation that appellant's personal characteristics made him particularly susceptible to coercion, nor has appellant claimed that he was mistreated or pressured in any way. Appellant properly was *Mirandized*, and his interview was short and professional. In sum, the totality of the circumstances indicate that appellant's statements were made voluntarily, and therefore, appellant's claim, even if preserved, is without merit.

[5] If appellant had made below the specific argument he raises on appeal, the State may have elicited more testimony in the issue.

II.

Sufficiency of the Evidence

Appellant argues that the "evidence was insufficient to sustain the convictions of first degree sexual offenses." Specifically, he contends that there was insufficient evidence of the aggravating circumstance necessary to render a non-consensual act a first degree sexual offense.

Maryland Code (2012 Repl. Vol.) § 3-305 of the Criminal Law Article ("CR") provides, in pertinent part, as follows:

> (a) A person may not:
> (1) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and
> (2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
> (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; [or]
> (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping[.]

Appellant acknowledges, as he must, that the victim testified that he struck her in the head with a crowbar. He contends, however, that this evidence was contradicted by other evidence, including that the nurse who conducted the sexual assault examination of the victim did not observe any injury to the back of her head, and the CT scan of her head did not indicate any abnormality or injury. He argues that "[n]o reasonable juror could believe that two blows to the back of [the victim's] head, with an iron or steel bar -- delivered with such violence that she was knocked unconscious -- could leave

absolutely no trace, whatsoever, on the back of her head," and therefore, the evidence was insufficient to support the charge of first degree sexual offense.

The State contends that the evidence was "sufficient to prove any one or all three of the aggravating factors necessary to establish a first-degree sexual offense." First, the victim's testimony was sufficient to support a finding that appellant used a dangerous weapon, a crowbar, in committing the sexual offense, and it was for the trier of fact, the jury, to determine the credibility of this testimony. Second, the State argues that there was sufficient evidence for the jury to find that appellant "inflicted serious physical injury to the victim," including injuring the victim by hitting her in the head with a crowbar and restraining her with zip ties and rope. Third, there was evidence to support a finding that appellant's actions placed the victim in reasonable fear of death or serious physical injury. In that regard, the State notes that appellant told the victim that, "if she tried to escape, he would tie her to a tree in the woods behind his house and leave her there where no one would find her," and the "jury reasonably could have found that the victim's fear was justified given [appellant's] abusive conduct." We agree with the State.

This Court recently set forth the applicable standard of review in determining the sufficiency of the evidence on appeal:

> The test of appellate review of evidentiary sufficiency is whether, "'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with sufficient evidence -- that is, evidence that either showed directly, or

> circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994). "We 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). Further, we do not "'distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.'" *Montgomery v. State*, 206 Md. App. 357, 385 (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)), *cert. denied*, 429 Md. 83 (2012).

Donati v. State, 215 Md. App. 686, 716, *cert. denied*, 438 Md. 143 (2014).

Here, the victim's testimony that appellant hit her with a crowbar, with sufficient force to render her unconscious, was sufficient, if believed, to satisfy the aggravating element requirement. To the extent that no detectable injury to the victim's head was found subsequently supports an argument that the blow did not occur, such a contradiction in the evidence "went only to the weight of the evidence, not to its sufficiency." *Binnie v. State*, 321 Md. 572, 580 (1991). *Accord Pryor v. State*, 195 Md. App. 311, 329 (2010) ("Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency.").

Under the circumstances here, the evidence was sufficient to support appellant's convictions of two counts of first degree sexual offense.[6]

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

[6] As the State notes, the evidence also was sufficient to satisfy the third type of aggravating circumstance, i.e., placing the victim in fear of imminent "death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping." Appellant tied the victim's hands and wrists so tightly that her skin was raw and blistered, attached zip ties around her neck, threatened to hurt her, violently struck her in the face, and threatened to tie her up to a tree in the woods and leave her where nobody would find her. This evidence was sufficient to place the victim in imminent fear of death or serious physical injury. *See Brooks v. State*, 53 Md. App. 285, 289 (1982) ("The [two] blows to the [victim's] face were sufficiently severe to cause substantial bruises. The blows combined with the threats of continued assaults were, we conclude, more than enough to create an actual apprehension of serious and imminent bodily injury.").