UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1058

September Term, 2016

OMAR QUDAH

v.

STATE OF MARYLAND

Woodward, C.J.
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: May 17, 2017

A jury in the Circuit Court for Prince George's County convicted Omar Qudah, appellant, of second-degree assault. He presents three questions on appeal, which we have consolidated into two:[1]

1. Did the court err in denying appellant's motion to dismiss based on a *Hicks* violation?[2]
2. Did the court err in admitting the video surveillance evidence?

For the reasons stated below, we answer both questions in the negative and affirm.

BACKGROUND

In May 2015, Christia Snider was working as a dancer at Fuego's, a nightclub in Hyattsville. Around 2:00 or 3:00 A.M. on May 2, 2015, Ms. Snider got into an argument with another dancer in the dressing room. The other dancer called in a security guard, who told Ms. Snider to leave. Ms. Snider continued to argue with her co-worker, and the security guard pulled Ms. Snider aside in an attempt to calm her down.

[1] Appellant's questions presented, verbatim from his brief, read:

> Did the Circuit Court have good cause to extend Mr. Qudah's trial beyond the *Hicks* date?
>
> Did the Circuit Court err[] in denying Mr. Qudah's motion to dismiss the case for violation of the *Hicks* Rule?
>
> Did the trial court err[] in allowing the State to introduce the video surveillance recording without any witness to establish authenticity?

[2] A *Hicks* violation takes its name from *State v. Hicks*, 285 Md. 310 (1979), and refers to a defendant's statutory speedy trial right. In that case, the Court of Appeals held that the remedy for a violation of that right, now codified at Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("C.P."), § 6-103 and Rule 4-271, was dismissal of all charges. *Hicks*, 285 Md. at 318.

As the security guard tried to calm Ms. Snider down, appellant, who was another security guard, came into the dressing room. Appellant, while attempting to have the other dancers leave the dressing room, got into a "verbal argument" with Ms. Snider. According to Ms. Snider, appellant grabbed her by her neck, "choked" her, and "slammed" her into a wall. Ms. Snider attempted to kick appellant. When the club manager tried to break up the fight, appellant was tasering Ms. Snider. When Ms. Snider fell to the ground, appellant stepped on her chest, kicked her, and "continued to tase" her.

Afterwards, appellant and another security guard picked up Ms. Snider and placed her in handcuffs. When Ms. Snider was permitted to leave the club, her sister took her to the hospital. She estimated that the overall incident lasted 30 to 40 minutes, and the fight, itself, was 15 to 20 minutes. Ms. Snider admitted that she was drunk at the time of the argument and that she had used marijuana that day, but she stated she was not high at work.

At trial, the State introduced photographs of Ms. Snider's injuries, her medical records, and a surveillance video of the incident. Ms. Snider narrated the surveillance video for the jury.

The State charged appellant with second-degree assault and carrying a dangerous weapon with intent to injure. The jury convicted appellant of second-degree assault. The court sentenced appellant to a prison term of two years, but later granted a motion for reconsideration that reduced appellant's sentence to 60 days of home detention, with credit for time served. Appellant noted this appeal.

DISCUSSION[3]

I. *Hicks*

There is no dispute that the *Hicks* date was March 15, 2016, and that trial was originally scheduled for January 25, 2016. On January 20th, the State requested a continuance because it had not received subpoenaed medical records or the surveillance video. Over appellant's objection, the court granted the continuance and ordered the circuit court's Office of Calendar Management ("OCM") to set trial before the *Hicks* date. OCM scheduled trial for March 8th. On January 27th, the court entered an order finding good cause to continue appellant's trial beyond the *Hicks* date due to the court's closure from January 25-26 for inclement weather.[4] The next day, OCM rescheduled appellant's trial for March 21st. Appellant subsequently moved to dismiss the case for failure to comply with *Hicks*, but the court's not addressing it and continuing trial to March 23, 2016, over appellant's objection effectively denied this motion. The trial did not begin on March 23rd because the prosecutor was unavailable. Appellant's trial occurred on April 11-12, 2016.

[3] Preliminarily, we note that appellant's brief does not contain the verbatim text of cited rules and statutes, as required by Rule 8-504(a)(8). This Court has observed that "'[t]he Maryland Rules are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed.'" *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 197 (2008) (quoting *Green v. State*, 127 Md. App. 758, 774 (1999)). Rule 8-602(a)(8) gives this Court the authority to dismiss an appeal for failure to comply with Rule 8-504. Because "reaching a decision on the merits of a case 'is always a preferred alternative[,]'" we choose not to dismiss this appeal for failure to abide by the rules of appellate procedure. *Rollins*, 181 Md. App. at 202 (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)).

[4] We note that Judge Melanie Shaw Geter, who has since been appointed to this Court, was the designated administrative judge.

On appeal, appellant contends that the court erred in continuing the trial beyond the *Hicks* date. He asserts, in a rather conclusory fashion, that the court was open on March 8th and that there was no good cause to postpone the trial. He also contends that there was no good reason for the court to continue the original trial date of January 25th.

The State contends that the court did not abuse its discretion in continuing appellant's trial to March 21st because the court found good cause based on the court closure – days that the court could not recover. Moreover, according to the State, its motion for continuance on January 20th is of no moment to our consideration of *Hicks* because that was not the postponement that delayed trial beyond the *Hicks* date, and that the court's closure due to earlier inclement weather constituted good cause. The State argues that the snow storm that closed the court on January 25-26 was an isolated event beyond the court's control, and because of that closure, the court was obligated to reschedule "numerous" cases, appellant's being one of them.

Rule 4-271(a)(1) and C.P. § 6-103(a) provide criminal defendants the statutory right to have a trial within 180 days of the earlier of the appearance of counsel or the first appearance in the circuit court. "For good cause shown," however, "the county administrative judge or a designee of the judge may grant a change of the trial date[.]" C.P. § 6-103(b). *See also* Rule 4-271(a)(1). The Court of Appeals has held that "the time limitation prescribed by the statute and the rule is 'mandatory,' and that 'dismissal of the criminal charges is the appropriate sanction where the State fails to bring the case to trial' within the 180-day period, absent 'extraordinary cause justifying a trial postponement.'" *State v. Huntley*, 411 Md. 288, 290-91 (2009) (quoting *Hicks*, 285 Md. at 318).

Importantly, "'[t]he critical order by the administrative judge, for purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days.'" *Thompson v. State*, 229 Md. App. 385, 398 (2016) (quoting *State v. Barber*, 119 Md. App. 654, 659 (1998)). This Court has also held that "'[t]he determination as to what constitutes a good cause, warranting an extension of the trial date beyond the [180-day] limit, is a discretionary one, which . . . carries a presumption of validity.'" *Id.* (quoting *Barber*, 119 Md. App. at 659). Accordingly, to justify a reversal on the basis of a *Hicks* violation, appellant must "demonstrate 'either a clear abuse of discretion or a lack of good cause as a matter of law.'" *Id.* (quoting *Moody v. State*, 209 Md. App. 366, 374 (2013)).

We agree with the State that its January 20th motion for continuance is of no moment to this discussion because it was not the "critical order." Rather, the court's January 27th order is the critical one because it extended appellant's trial date beyond the 180-day limit.

Appellant appears to ascribe fault with the court's January 27th order because neither he nor the State moved to continue the case. Rule 4-271(a)(1) provides in part, however, that "[o]n 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." (Emphasis added). Accordingly, the court was acting within its statutory authority.

Appellant also asserts that there was no good cause to postpone because the court was open on March 8th, the scheduled date of trial. Although true, appellant's case was, undoubtedly, one of many cases affected by the January 25-26 court closure. Indeed, at a

proceeding on March 21, 2016, the State asserted that the administrative judge had found good cause to delay appellant's case, "as [it] did half of the other cases that are in this courtroom today."[5] The Court of Appeals has observed that "it is the administrative judge who has an overall view of the court's business, who is responsible 'for the administration of the court,' who assigns trial judges, who 'supervise[s] the assignment of actions for trial,' who supervises the court personnel involved in the assignment of cases, and who receives reports from such personnel." *State v. Frazier*, 298 Md. 422, 453-54 (1984) (internal footnotes omitted). The administrative judge is, therefore, "in a much better position than another judge of the trial court, or an appellate court, to make the judgment as to whether good cause for the postponement of a criminal case exists." *Id.* at 454.

Furthermore, the Court of Appeals has held that the statutory speedy trial right is meant to "prevent chronic delay, but that when a delay is the result of 'an isolated instance rather than a recurring problem leading to chronic trial delays' the administrative judge's finding of good cause should be upheld." *State v. Toney*, 315 Md. 122, 134 (1989) (emphasis omitted) (quoting *Frazier*, 298 Md. at 463). The court's closure due to the inclement weather was an isolated instance. In such circumstances, we give great weight to the administrative judge's overall knowledge of the circuit court's docket and personnel availability and affirm the finding of good cause in this case and perceive no abuse of discretion.

[5] In a busy metropolitan area court, an unscheduled closing such as a snow event obviously has a domino effect on scheduled cases. Things to be considered in rescheduling cases would be how long a case may have exceeded *Hicks* and whether a defendant was incarcerated or free on bond pending trial.

To the extent that appellant finds fault with the court's reliance on OCM to reschedule the trial, the Court of Appeals has held that this practice is not problematic: "Nor is it essential, under the statute and rule, that the postponing judge, at the time of postponement or thereafter, personally reset or cause the case to be reset for a particular date. . . . Once that determination is made, the postponement is valid for purposes of the rule, subject only to the deferential review accorded the judge's good cause finding." *Rosenbach v. State*, 314 Md. 473, 479 (1989). In other words, "[w]hether a postponement is for good cause has nothing to do with whether the postponing judge delegates the assignment of a new trial date to an assignment office, or with the length of time from postponement to actual trial." *Id.* at 481.

II. Surveillance Video

At trial, the State sought to play a surveillance video of the incident. Appellant objected, contending that Ms. Snider could not authenticate the video. Ms. Snider testified that the video was a fair and accurate depiction of the assault. The court admitted the video.

On appeal, appellant argues that the court erred in admitting the video. He maintains that the State needed a witness to testify as to the procedure of compiling the surveillance video and copying it to a CD. Appellant contends that there was no testimony as to the reliability of the surveillance equipment, its functionality, or the chain of custody of the video. He asserts that the State did not produce a single witness who could authenticate the video.

The State maintains that the court properly admitted the surveillance video because Ms. Snider authenticated it. The State readily concedes that no witness testified as to the

functionality of the surveillance equipment or the process of copying the video onto a CD. But, in the State's view, such testimony would have been "irrelevant" in this case because Ms. Snider testified that the video was a fair and accurate depiction of the event, which is all that is required for admissibility.

Ordinarily, "we will 'not disturb a trial court's evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.'" *Bey v. State*, 228 Md. App. 521, 535 (2016) (quoting *Moreland v. State*, 207 Md. App. 563, 568-69 (2012)), *aff'd*, ___ Md. ___, No. 49, Sept. Term 2016 (filed Mar. 27, 2017).

Rule 5-901(a) mandates that a party authenticate evidence for it to be admissible, which requires "evidence sufficient to support a finding that the matter in question is what its proponent claims." The Court of Appeals has held that a videotape is considered in the same manner as a photograph "for admissibility purposes." *Washington v. State*, 406 Md. 642, 651 (2008). Accordingly, there are two methods of authenticating photographs and videos:

> "Photographs may be admissible under one of two distinct rules. Typically, photographs are admissible to illustrate testimony of a witness when that witness testifies from first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time. There is a second, alternative method of authenticating photographs that does not require first-hand knowledge. The 'silent-witness' theory of admissibility authenticates 'a photograph as a mute or silent independent photographic witness because the photograph speaks with its own probative effect.'"

Id. at 652 (quoting *Washington v. State*, 179 Md. App. 32, 44 (2008), *rev'd on other grounds*, 406 Md.). Stated another way, "the pictorial testimony theory of authentication

allows photographic evidence to be authenticated through the testimony of a witness with personal knowledge, and the silent witness method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result." *Id*. In short, appellant's reliance on *Washington* is misplaced.[6]

Here, the State did not proceed via the "silent witness" theory of authentication. It opted instead for the "pictorial testimony" theory through the testimony of Ms. Snider, an eyewitness and participant in the event filmed, who testified that the surveillance video was a fair and accurate representation of the event. Testimony concerning the reliability and functionality of the surveillance system and the process of copying the tape to a CD was unnecessary in this case because the State needed to authenticate the video through only one of the two methods discussed above, not both.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] *Washington* was a case where the victim had initially withheld identifying the defendant, and the State used the video recording to supplant eyewitness testimony that defendant was the shooter, and the shooting was not accidental. The owner of the bar did not know how to transfer the data from eight surveillance cameras to a portable disc and hired a technician to transfer the data from the eight cameras onto a disc. 406 Md. at 655-56.