UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1414

September Term, 2016

ANTONIO DINGLE

v.

STATE OF MARYLAND

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

JJ.

Opinion by Kenney, J.

Filed: July 12, 2017

Appellant, Antonio Dingle, was indicted in the Circuit Court for Baltimore City, Maryland, and charged with attempted first degree murder, robbery with a dangerous weapon, theft of a motor vehicle, and several other related counts. Prior to trial, appellant's motion to suppress bloodstain and DNA evidence was denied following a hearing. Following a jury trial, appellant was convicted of attempted second degree murder, first degree assault, second degree assault, robbery, robbery with a dangerous weapon, theft of property with a value between $1,000 and $10,000, theft of a motor vehicle, and reckless endangerment. Appellant was sentenced to twenty years for attempted second degree murder, to be followed consecutively by ten years for robbery with a dangerous weapon and accompanied by a concurrent sentence of five years for theft of a motor vehicle. The remaining counts merged at sentencing. Appellant timely appealed and presents the following questions for our review:

> 1. Did the lower court err by allowing admission of bloodstain and DNA evidence, improperly seized from Mr. Dingle without a warrant, when Mr. Dingle was restrained, under police surveillance, and when there was no cause for foregoing a warrant to preserve the evidence sought?
>
> 2. Did the trial court err by instructing the jury that a witness had identified Mr. Dingle as a person who committed "the crime" when there were multiple crimes at issue and no testifying witness observed Mr. Dingle attack the victim?
>
> 3. Did the trial court err by denying Mr. Dingle's motion for acquittal where the State's case was purely circumstantial and where no reasonable jury could conclude, beyond a reasonable doubt, that because Mr. Dingle was near the crime scene he must have attacked the victim?

For the following reasons, we shall affirm.

BACKGROUND

Motions Hearing

On November 11, 2014, at approximately 6:30 to 7:00 a.m., Detective Jay Rose, of the Baltimore Police Department, responded to 2817 Winchester Street in Baltimore, for a report of an aggravated assault and robbery. When he arrived at the scene, Detective Rose observed blood throughout the residence, including on the front door, the wall in a middle room, and a hallway leading into the kitchen. He also saw a trail of blood going up the stairs into the second floor bedroom associated with the victim, Gregory Smith. There was blood on the bed in that room. More blood was found in the residence, including down into the basement on a pile of laundry.

Detective Rose learned that appellant and one Jessica Flagg also lived at the same residence. Appellant was considered a person of interest in the investigation based on the fact that he was not at home when the police responded to the 911 call. However, when he spoke to the victim at Shock Trauma, Smith "did not know who assaulted him."

While they were still at the crime scene, police learned that Smith's Acura TL vehicle was stolen. Detective Rose explained that he spoke with one of Smith's neighbors, Cynthia Young, who told the detective that Smith's car was gone and that "Mr. Smith never let anybody drive that vehicle." This information was confirmed by the victim, Smith, who told Officer Ronald Ulmer at the crime scene that, "[m]y car is gone and they took it."

Based on information that the victim's car was stolen, Detective Rose put out "be on the lookout" ("BOLO") flyers through departmental e-mail about both the stolen vehicle and appellant, because appellant was wanted for questioning concerning the incident. The

Acura was found at approximately 2:00 a.m. on November 12, 2014, the day after the assault. It was stopped in Baltimore by Officer Ronald Ulmer. Appellant, the driver, and Jessica Flagg were inside the stolen Acura at the time of the stop.[1]

Detective Rose testified that appellant was arrested at the scene of the stop for being in possession of stolen property, *i.e.*, the vehicle. After the car stop, appellant was placed in a police wagon and brought to an interview room located in the Southwest District Police Station.

Detective Rose, and Detective Michael Witmer, met with appellant "[a]lmost immediately" after he was stopped and brought to the police station. Appellant, who was handcuffed to a wall in the interview room, declined to waive his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).

Pertinent to our discussion, after appellant declined to speak to the police, Detective Rose noticed that appellant was wearing a vest, a gray t-shirt, "Adidas style" running pants, tennis shoes and black socks. Some of the clothes still had price tags attached. Detective Rose observed "what appeared to be blood drops on his socks, on the top side of his socks," near the shin. Detective Rose was familiar with what blood looked like, having bled before, and that he also knew what blood looked like on clothing. Detective Rose clarified that he saw blood on just one sock, as well as appellant's t-shirt. The detective then seized the socks and t-shirt appellant was wearing.

[1] During that stop, Flagg was left unattended in the passenger seat when the police asked appellant to exit the vehicle. Flagg then moved over to the driver's seat and fled the scene. Flagg and the vehicle subsequently were found on or around January 8, 2015.

The court then attempted to clarify how the detective came to be in possession of appellant's socks and t-shirt:

> THE COURT: When you say recovered, explain to me what that means.
>
> [THE WITNESS]: I took the socks and put – and then they were submitted into evidence control.
>
> THE COURT: Well, you took the socks. Did you say, "Mr. Dingle, I want your socks," or –
>
> [THE WITNESS]: Yeah.
>
> THE COURT: – "Mr. Dingle, I'm going to take your socks"? I mean, tell me how it happened.
>
> [THE WITNESS]: So I helped him remove his shoes and then he took his socks off.
>
> THE COURT: Well, what did you say to him?
>
> [THE WITNESS]: I said, "I'm going to take your socks because I – they're evidence," I guess. I don't recall the exact words that I used.
>
> THE COURT: And then you helped him?
>
> [THE WITNESS]: I helped him take his shoes off and then he took his socks off.
>
> THE COURT: Okay. And how about the shirt?
>
> [THE WITNESS]: I think he just took the shirt off.

Appellant was wearing a gray t-shirt and a vest. The court inquired further:

> THE COURT: And where was it that you observed what you thought may have been blood on that t-shirt when you were speaking with Mr. Dingle?
>
> [THE WITNESS]: I didn't see the blood until we started recovering [the] socks and so then we looked at the rest of it.
>
> THE COURT: I don't understand what you mean by that.

[THE WITNESS]: So once I saw the blood on his socks, then I checked – we checked the rest of him to see if there was any other blood.

THE COURT: What do you mean you checked the rest of him?

[THE WITNESS]: Like, his arms and his clothes to see if there was any blood on him that –

THE COURT: So you just basically take a careful look at the clothing he's wearing?

[THE WITNESS]: Uh-huh.

THE COURT: Did you unzip his vest?

[THE WITNESS]: It was already unzipped. I believe the blood was on the body of the t-shirt.

THE COURT: So I understand this, after you recover or remove, which is after Mr. Dingle removes his own socks and I guess hands them to you –

[THE WITNESS]: Uh-huh.

THE COURT: – you then engage to take a closer look at the clothing he's wearing; is that what –

[THE WITNESS]: Yes.

THE COURT: – you're saying?

[THE WITNESS]: Yes.

THE COURT: And is it at that time that you observed what you thought might've been blood on his t-shirt, his –

[THE WITNESS]: Yes.

THE COURT: – gray t-shirt? And where would that blood have been seen by you? What part of his t-shirt did you see –

[THE WITNESS]: It was on the body of the t-shirt. I can't – I don't –

THE COURT: What –

[THE WITNESS]: – recall where.

THE COURT: – what does that mean, on the body?

[THE WITNESS]: Like the torso.

THE COURT: Okay. Front torso? Rear torso?

[THE WITNESS]: I don't recall where.

Detective Rose confirmed that he "told [appellant] to take his t-shirt off." The detective believed the t-shirt was evidence "[b]ecause I saw what appeared to be blood on it." And that evidence "could place [appellant] at the scene where I saw an obscene amount of blood." The same was true for appellant's socks, according to Detective Rose, because "there was blood droplets on – well, what appeared to be blood droplets on the tops of the socks."

After the appellant's socks and t-shirt were taken and packaged for further evidentiary purposes, appellant remained attired in his vest and shoes. Using the computers located at the Southwest District Police Station, Detective Rose then prepared an application for statement of charges, charging appellant with armed robbery and attempted murder. He also prepared a "toe tag," which included appellant's "vital information, his name and date of birth and his band number, which is the number that we use in order to complete his booking on the computer." Appellant was temporarily moved from the interview room to a holding cell, where he remained for a "couple hours." According to Detective Rose, while in the holding cell, appellant asked to speak to Detective Witmer and then "made statements that he took the car and some guys made him take the car, he –

and that he had been to the scene." Detective Rose confirmed that these statements were made after appellant's socks and t-shirt were seized.[2]

Appellant was eventually transported to Central Booking. It was Detective Rose's understanding that appellant's remaining clothes would have been taken there and retained as his personal property until his release. Detective Rose also testified that his prepared statement of charges was submitted electronically to a District Court Commissioner, and that it was ultimately up to the commissioner to decide what, if any, crimes to charge in this case.

After the evidentiary part of the hearing concluded, appellant argued that the police should have obtained a search warrant before seizing his clothing during the interview. Appellant argued, apparently in the alternative, that he was not under arrest, and that, even if he was, "there was no lawful reason for the arrest[.]" The State responded that appellant was under arrest for being in possession of the stolen car when he was interviewed, and that the blood stains were visible in plain view.

After hearing further argument, the court ruled that it would hold its ultimate ruling in abeyance. However, the court did make the following findings and conclusions at the end of the hearing:

> In this instance, I find that there was probable cause for the officers to place Mr. Dingle under arrest, that being Officer Ulmer, for the crime of possession of recently stolen property, theft, if you will. It is within 24 hours of the assault and within 24 hours of the officers/the police being told that – by the victim that, "They took my car too." The officers receive additional

[2] The court denied appellant's motion to suppress these statements prior to jury selection. This ruling is not challenged on appeal.

> information from a neighbor who says that the victim owned this Acura vehicle and that I believe she said to them that he never lets anyone drive it.
>
> Okay. So combining the two, it stands to reason that there is probable cause to believe that the car was stolen, and again, you know, probable cause standard is well noted in Illinois v. Gates [462 U.S. 213 (1983)], which of course was an evidence case as opposed to an arrest case, but it stands – the analysis is the same, that there's – probable cause exists when based upon a common sense analysis of all the circumstances set forth there's a fair probability in this case that a crime was committed and that the Defendant committed that crime and I hold that there was a fair probability that at that moment, the Defendant committed the crime of automobile theft at the time he was arrested, I believe it was about 2:30 in the morning on August 12th.
>
> So as a result, the police officers bring him in to the station and of course he's also a person of interest in the assault of Mr. Smith and as a result, the officers are paying close attention to Mr. Smith [sic] when they are interacting with him and the officers notice on his socks what they believe to be dried blood. I agree with the statement that observation is made in plain view.
>
> They also observe what appears to be dried blood on a gray t-shirt that he's wearing and I also find that that observation was made in plain view.

The court recognized that appellant's argument was whether, at this point, the police were required to obtain a search warrant before seizing appellant's clothing. The court directed the parties to submit written memoranda on the question, indicating that it would issue a ruling following further consideration.

Thereafter, appellant maintained, in a written motion, that the police needed a search warrant and that the warrantless seizure of his clothing was not incident to a lawful arrest. Even were the arrest lawful, appellant also argued that the search was not reasonable under the search incident rationale because it could not be justified as being in the interest of police safety or to prevent the destruction of evidence. Appellant also asserted that the search was not contemporaneous with his arrest, as it occurred at the Southwest District

Police Station, not at the location of the traffic stop. Therefore, appellant argued, the seizure of his clothing was not lawful under either the plain view doctrine or exigent circumstances.

The State responded that the seizure of appellant's clothing was reasonable under the plain view doctrine because, following appellant's arrest for operating a stolen vehicle, Detective Rose made his observations of appellant in the police interview room and the incriminating nature of the items, *i.e.*, the suspected blood stains on appellant's clothing, was immediately apparent. The State also argued the seizure of appellant's clothing was lawful as a proper search incident to arrest, relying primarily on *United States v. Edwards*, 415 U.S. 800 (1974). The State further suggested that exigent circumstances authorized the seizure of appellant's clothing.

In a written memorandum and order, the court denied appellant's motion to suppress his socks and t-shirt. The court reiterated its findings from the hearing, including that, during the interview, Detective Rose "noticed what appeared to be dried blood on the Defendant[']s socks and t-shirt" and "ordered the Defendant to remove both his socks and t-shirt." The court then denied the motion to suppress, ruling in pertinent part:

> The Court finds that the removal and seizure of the Defendant's clothing while detained [at] the Southwest District Police Station on November 12, 2014 was the product of a lawful search incident to his arrest. The Court finds that Jones v. State, 213 Md. App. 483, particularly analogous in arriving at that conclusion. Even if the seizure was unlawful pursuant to the Defendant's lawful arrest, the Court secondarily finds that the plain view doctrine is applicable to this circumstance as the officer[] recognized the substance on the Defendant's clothing to be dried blood. Knowing that the victim was stabbed and having observed a significant amount of blood at the crime scene, the Court finds that the police had probable cause to believe that

the dried blood may be linked to that crime (i.e. the blood was that of the victim). As such, no warrant was required.

Trial

On November 11, 2014, Baltimore City police responded to the 2800 block of Winchester Street for an initial call of a burglary. Officer Daniel Belen was the first responder to the scene and saw the victim, Gregory Smith, sitting on the porch of 2813 Winchester Street, underneath a white blanket that was covered in blood. Smith told Officer Belen that he was attacked in his residence two doors down at 2817 Winchester Street. After a medic arrived, Officer Belen went into Smith's residence, a three-level rowhome, and noticed that no one was inside. However, "blood [was] all over the house," including in the living room, the hallway, the steps leading up to the bedrooms, the bed in one of those bedrooms, and in the basement. Along with a "blood pool" in the basement, Officer Belen recovered a red and black watch, an extension cord, and some blankets.

On cross-examination, Officer Belen testified that he spoke to Smith and Smith told him that "[h]e did not know who did it to him." He also agreed that he did not find a weapon at the scene. In addition, Officer Belen did not recall whether there were signs of forced entry, and explained that, normally, if he detected such signs, he would have noted that in his report.

Officer Ronald Ulmer also responded to the scene and spoke to Smith before the medics arrived. Smith told the officer that he had a black Acura parked in the back of his residence. After Officer Ulmer discovered that the vehicle was not there, Smith told him, "they had taken the car." A stolen vehicle report was issued in connection with this vehicle,

and Officer Ulmer was aware that a white female and an African American male were wanted for questioning in connection with the vehicle theft. In fact, on cross-examination, Officer Ulmer confirmed that, when he spoke to Smith about his attacker, Smith told him "his roommate brought someone there, and they attacked him."

Late the next day, November 12, 2014, Officer Ulmer spotted a vehicle matching the description of the stolen car in the 3100 block of North Avenue. Checking the vehicle tags over the radio, Officer Ulmer learned that this vehicle, a black Acura, was reported stolen. The police stopped the Acura and Officer Ulmer confirmed that the two occupants matched the descriptions of the man and woman in the flyers. Officer Ulmer positively identified appellant, in court, as the driver of the Acura. As Officer Ulmer and his partner were attempting to place appellant in custody, the female in the passenger seat slid over to the driver's side of the car and sped off. Other officers pursued the Acura, and Officer Ulmer placed appellant in a police wagon, "right away," and had him transported to the Southwest District Police Station.[3]

Detective Jay Rose, the primary investigator in this case, responded to the crime scene at 2817 Winchester after the victim had been transported to the hospital. Detective Rose observed blood, both outside and inside the residence, including in the upstairs bedroom, down the hallway and stairs, into the dining room, through the kitchen, and down into the basement. He did not see any signs of forced entry. During his investigation that

[3] The female passenger who fled the scene in the Acura, Jessica Flagg, eventually was arrested and pleaded guilty to several moving violations in connection with her flight from the scene of the traffic stop.

same day, which included speaking to Officers Belen and Ulmer, Detective Rose learned that appellant and Jessica Flagg were also residents of this home. He also learned that Smith's car was missing. Based on this, Detective Rose prepared and distributed flyers that asked other police to be on the lookout for the car, as well as appellant and Flagg, because both were wanted for further questioning.

The next day, after appellant was arrested while driving the stolen vehicle, Detective Rose spoke to appellant at the Southwest District police station. Assisted by Detective Michael Dale Witmer, Detective Rose read appellant his *Miranda* rights. Appellant declined to waive those rights or to speak with the police, at that time. After this, Detective Rose noticed what appeared to be blood stains on appellant's socks and t-shirt. Detective Rose also noticed that some of appellant's other clothing, including his shoes, appeared brand new. There were also price tags still affixed to appellant's pants and his vest. The detective took photos of appellant at that time, and those photos, depicting the apparent blood stains, were admitted into evidence.[4]

After appellant was photographed, the detective had appellant remove his t-shirt and socks. Those items were submitted to Evidence Control for further examination. Blood was found on the gray t-shirt and one of the socks recovered from appellant. Blood was also found on a watch recovered from the basement of the crime scene. These stains were compared with DNA swabs obtained from the cheeks of the victim, Gregory Smith, and

[4] The photos are included in the record, and although it is difficult to see the stain on the t-shirt, due to the fact that appellant is wearing a vest, a stain is visible on one of his socks.

from appellant. A mixture of DNA from both Smith and appellant was found on the blood stain on the t-shirt. DNA from Smith was found on blood stains recovered from appellant's sock. And, blood found on the watch, recovered from the basement, matched the DNA profile for the victim, Smith.

Detective Rose confirmed that he spoke to the victim, Smith, while he was being treated at the University of Maryland Shock Trauma unit. He also spoke to him on December 1, 2014. However, the detective had not been able to speak to, or even find, Smith since that time and Smith did not appear to testify at appellant's trial.

In addition to Detective Rose, Detective Witmer, the other officer present during appellant's interview at the police station, testified that, after the interview, appellant was transported to a nearby holding cell. Some time later, appellant asked to speak to Detective Witmer. Detective Witmer testified that appellant told him that "the guys made him do it[.]" Detective Witmer advised appellant that he could not speak to him unless he waived his rights, but appellant ignored that advice and continued to speak. According to Detective Witmer, appellant said "that there were some guys that were in the drug game that made him go into the house, and they told him exactly where to go to get a package and then take the victim's car." Appellant also stated that "he didn't see the guy in the house," apparently referring to the victim, Smith, but he did see blood inside the house. Detective Witmer confirmed that Detective Rose was standing nearby when appellant made these statements, and Detective Rose corroborated this account.

Jessica Flagg was granted immunity by the State to testify at appellant's trial. Flagg confirmed that she and appellant lived at 2817 Winchester, with the victim, Gregory Smith,

at the time of the incident. On the morning of November 11, 2014, Flagg woke to the sound of "banging" and "scuffling in the house." Flagg got out of bed, went to the top of the stairs, and noticed "a lot of blood[.]" Acknowledging that she used heroin and cocaine at the time, and was "under the influence" that day, Flagg testified that she went downstairs and "saw pools of blood everywhere," and "had never seen anything that horrific before." She saw Smith, visibly injured and lying at the bottom of the steps, with appellant behind him. Smith's head was resting on appellant's lap. No one else was in the house at that time.

Flagg confirmed that she gave a statement to the police in January 2015 after she was arrested. After her recollection was refreshed with that statement, Flagg testified that she saw appellant looking angry and holding "[w]hat appeared to be a knife." And, there was blood on appellant's shirt and his face.

After seeing the scene throughout the house, Flagg and appellant decided to leave, taking Smith's black Acura. They first went and bought drugs, and then clothing at a nearby Target store. Flagg did not recall what happened to the bloody clothes she saw appellant wearing earlier. At some point after they fled, Flagg confirmed that she saw a backpack containing a "pretty full" Ziploc baggie of cocaine in the trunk.

She and appellant were stopped the day after the incident while appellant was driving Smith's car. When appellant was removed from the car, Flagg noticed the car was still in "drive." Because she was on probation, Flagg moved to the driver's seat, and sped away from the scene, not stopping until she got to Virginia. She eventually was arrested

and pleaded guilty to the traffic offenses associated with the traffic stop, and was sentenced to 120 days in jail.

Based on information provided from Flagg, on January 8, 2015, Detective Rose went to Fairfax, Virginia, and recovered Smith's Acura. A knife, a credit card in appellant's name, and suspected drugs were found inside that vehicle. Detective Rose testified that he did not recall if he asked for latent fingerprint evidence to be collected from the car or its contents, including the knife, and confirmed that no such evidence was obtained. He further testified, on recross examination, that he did not see any blood on the knife when it was found, approximately two months after the crime.

We may include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the motions court erred by not suppressing his clothes and the evidence derived therefrom on the grounds that they were seized without a warrant. Recognizing the exception to the warrant requirement for searches incident to arrest, appellant maintains that the seizure in this case exceeded the permitted scope under that doctrine and was unnecessary to preserve evidence. Appellant also asserts that the motions court erred in relying on the plain view exception because appellant posed no risk to the evidence on his clothing and the incriminating nature of the evidence was not immediately apparent. In addition, appellant claims the seizure was not justified by exigent circumstances and that admission of the evidence from his clothing was not harmless beyond a reasonable doubt.

The State does not respond to appellant's plain view or exigent circumstances arguments. Instead, the State maintains that the motions court properly denied the motion to suppress because seizure of appellant's clothing was lawful under the search incident to arrest rationale. Contending that the arrest of appellant for being in possession of the victim's stolen car clearly was supported by probable cause, the State argues "no more was needed to seize his clothing."

As we will explain, we agree that the seizure of appellant's clothing was reasonable under both the search incident and plain view exceptions to the warrant requirement. For that reason, we need not decide whether the seizure was reasonable based on exigent circumstances or whether the admission of the scientific results obtained from the blood evidence, following examination of appellant's clothing, was harmless beyond a reasonable doubt. *See Demby v. State*, 444 Md. 45, 51 (2015); *Decker v. State*, 408 Md. 631, 649 n. 4 (2009).

A. Standard of review and the Fourth Amendment

Our standard of review is well-established:

> In reviewing a trial court's ruling on a motion to suppress, we defer to that court's findings of fact unless we determine them to be clearly erroneous, and, in making that determination, we view the evidence in a light most favorable to the party who prevailed on that issue, in this case the State. We review the trial court's conclusions of law, however, and its application of the law to the facts, without deference.

Taylor v. State, 448 Md. 242, 244 (2016) (citations omitted), *cert. denied*, 137 S.Ct. 1373 (2017).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

Generally, an officer must have a warrant, supported by probable cause, to either arrest or conduct a search of a person, and searches conducted without a warrant are considered both presumptively and *per se* unreasonable, under the Fourth Amendment. *Moulden v. State*, 212 Md. App. 331, 342 (2013) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967) and *Payton v. New York*, 445 U.S. 573, 586 (1980)). However, as will be discussed, the warrant requirement is subject "'to a few specifically established and well-delineated exceptions.'" *Id*. (quoting *Katz*, 389 U.S. at 357).

B. The seizure of appellant's clothing was reasonable as a search incident to arrest.

"Among the exceptions to the warrant requirement is a search incident to a lawful arrest." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (citing *Weeks v. United States*, 232 U.S. 383, 392 (1914)). "The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Gant*, 556 U.S. at 337 (citing *United States v. Robinson*, 414 U.S. 218, 230-234 (1973); *Chimel v. California*, 395 U.S. 752, 763 (1969)); *accord Taylor*, 448 Md. at 246; *Scribner v. State*, 219 Md. App. 91, 99, *cert. denied*, 441 Md. 63 (2014). The exception has been explained as follows:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Chimel, 395 U.S. at 762-63. Furthermore, as this Court has stated:

> Given, however, the predicate of a lawful arrest, the police prerogative of a search incident to that arrest will automatically follow, with nothing further being required to be shown. *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); *Gustafson v. Florida*, 414 U.S. 260, 94 S.Ct. 488, 38 L.Ed.2d 456 (1973). The only nuanced wrinkle added to the justification requirement over the years is that the arrest must be a custodial arrest. *Knowles v. Iowa*, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998).

Feaster v. State, 206 Md. App. 202, 228 (2012).

There is no dispute in this case that there was probable cause to arrest appellant when he was stopped driving the assault victim's Acura. *See Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003) ("[T]he probable-cause standard is a 'practical, nontechnical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act'") (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). At issue in this case is the delayed search of appellant's person, and the seizure of the clothing that he wore when he was arrested. For that reason, cases relied on by appellant concerning searches of automobiles and nearby containers are

inapposite. For instance, in *Gant, supra*, the Court considered the reasonableness of a search of Gant's jacket that was left behind in his vehicle after the police had already secured him in a police vehicle. *Gant*, 556 U.S. at 335. Recognizing that the issue concerned whether the seized items were in Gant's "immediate control," or "the area from within which [Gant] might gain possession of a weapon or destructible evidence[,]" *see Chimel*, 395 U.S., at 763, the Court held that vehicle searches incident to a "recent occupant's arrest" are not lawful under the Fourth Amendment "after the arrestee has been secured and cannot access the interior of the vehicle." *Id*. That *Gant* concerned a search of an automobile and nearby containers, and not the person himself, appears supported by the Court's conclusion "that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle." *Id*. *See also Feaster*, 206 Md. App. at 231-32 (observing that the concept of the "*Chimel* perimeter," *i.e.*, the "wingspan" or "wingspread" of the arrestee, remains good law and that *Gant* "dealt exclusively with the narrow problem of how to apply the *Chimel* perimeter to the passenger compartment of an automobile. This line of cases never presumed to deal more broadly with anything else").

Moreover, we are not persuaded by appellant's suggestion that his clothing was not in the area of his immediate control simply because he was in custody or under arrest. Indeed, this Court has noted a distinction "between searches of items 'closely associated with the arrestee' made at the police station and searches of luggage and other articles of personal property not immediately associated with the person of the arrestee." *Preston v. State*, 141 Md. App. 54, 66 (2001). In such cases, "[t]he former may be searched long after

the arrest, while the latter may be searched only incident to the suspect's arrest." *Id*. *See also United States v. Wright*, __ F.Supp.3d.__, No. CR 16-0073 (RC), 2017 WL 456419, at *6 (D.D.C. Feb. 2, 2017) (holding that defendant's clothing, shoes, and the contents of his pockets were "clearly within the scope of a search incident to arrest. Such a search can properly include 'the arrestee's person and the area within his [or her] immediate control'") (citing *Arizona v. Gant, supra*); *State v. Bonds*, 299 P.3d 663, 671 (Wash. Ct. App. 2013) ("Unlike searches of vehicles incident to arrest, the arrestee's person, including the clothing he is wearing at the time of the search, is always under his immediate control, giving rise to a concern that he may access a weapon or destroy evidence concealed on his person. Handcuffing a defendant does not change this fact.") (citation omitted).

Ultimately, this case does not concern the geographic limitation of searches incident to arrest, but instead, the temporal limitation. *See United States v. Currence*, 446 F.3d 554, 557 (4th Cir. 2006) ("Searches incident to arrest have both a geographic and temporal limitation"). The temporal limitation was discussed in *United States v. Edwards*, 415 U.S. 800 (1974). In that case, Edwards was arrested and charged with attempting to break into the U.S. Post Office for Lebanon, Ohio. *Edwards*, 415 U.S. at 801. Investigation revealed that someone had tried to pry open a window, leaving paint chips on the window sill. *Id*. at 802. The morning after Edwards was arrested and taken into custody, his clothing was seized. *Id*. Subsequent examination of that clothing revealed the presence of paint chips that matched those found at the scene. *Id*. The issue presented concerned whether Edwards' clothing could be seized, and tested, under the Fourth Amendment. *Id*. The Supreme Court ultimately upheld the seizure, observing as follows:

> It is also plain that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention. If need be, *Abel v. United States*, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960), settled this question. There the defendant was arrested at his hotel, but the belongings taken with him to the place of detention were searched there. In sustaining the search, the Court noted that a valid search of the property could have been made at the place of arrest and perceived little difference.
>
> > 'when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to the place of detention has additional justifications, similar to those which justify a search of the person of one who is arrested.' *Id*., at 239, 80 S.Ct. at 697.
>
> The courts of appeals have followed this same rule, holding that both the person and the property in his immediate possession may be searched at the station house after the arrest has occurred at another place and if evidence of crime is discovered, it may be seized and admitted in evidence. Nor is there any doubt that clothing or other belongings may be seized upon arrival of the accused at the place of detention and later subjected to laboratory analysis or that the test results are admissible at trial.

United States v. Edwards, 415 U.S. at 803-04 (footnotes omitted); *see also Illinois v. Lafayette*, 462 U.S. 640, 645 (1983) (discussing administrative inventory stationhouse searches and stating: "[I]f an arrestee is taken to the police station, that is no more than a continuation of the custody inherent in the arrest status").

In *Stokeling v. State*, 189 Md. App. 653 (2009), this Court relied on *Edwards*, and our analysis of *Edwards* from *Holland v. State*, 122 Md. App. 532 (1998), to conclude that the police may transport a person to the police station to complete a search incident to arrest. *Stokeling*, 189 Md. App. at 672, 674. In *Holland*, this Court upheld a similar search

that took place at the detention center, hours after the suspect was arrested. *Holland*, 122 Md. App. at 535-36. We explained:

> When the police, on the street or at the station house, lawfully take an arrestee into custody, the twin exigencies of that custodial situation (concerning *possible* weapons and *possible* evidence) justify the warrantless search-incident at its inception. Once the automatic police prerogative of conducting a warrantless search-incident vests, however, it is not necessarily divested just because it is not immediately utilized. The reasonableness clause of the Fourth Amendment does not hold a stop-watch on the police, commanding that as exigency arguably diminishes, the search-incident prerogative proportionately lapses.

Holland, 122 Md. App. at 539 (emphasis in original).

We further explained this rationale in *Fontaine v. State*, 135 Md. App. 471 (2000), a case where the defendant was searched at a Maryland police station after he was arrested in nearby Delaware[5]:

> It is plain that searches and seizures that could be made on the spot at the time of arrest may be legally conducted later at the place of detention. *See United States v. Edwards*, 415 U.S. 800, 803, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974). This includes both the person and the property in his immediate possession. *See id.* (holding that authorities were entitled to search arrestee's clothing after he had been placed in his cell and to keep the clothing in official custody). The Supreme Court has reasoned that police conduct that would be impractical, unreasonable, or embarrassingly intrusive on the street may be more readily performed at the police station. *See Illinois v. Lafayette*, 462 U.S. 640, 645, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983). For example, the interests supporting a search incident to arrest may not justify disrobing an arrestee on the street, but the practical necessities of routine jail administration may justify taking a prisoner's clothes before confining him. *See id. See generally Holland v. State*, 122 Md. App. 532, 536-41, 713 A.2d 364, *cert. denied*, 351 Md. 662, 719 A.2d 1262 (1998).

[5] The town of Delmar is located in part in Delaware and in part in Maryland. The police station is in Maryland.

Fontaine, 135 Md. App. at 478; *see also Jones v. State*, 213 Md. App. 483, 500-01 (2013) (affirming a court's denial of a motion to suppress results of a search for gunshot residue, recovered incident to arrest).

In this case, we are persuaded that the seizure of appellant's socks and t-shirt at the police station, following his arrest for being in possession of a stolen vehicle, was reasonable under the search incident to arrest rationale. Although the chronology of events is not specific, Detective Rose confirmed that appellant was brought to the police station in a police wagon "right after the car stop," and that, afterwards, he and Detective Witmer began to talk to appellant "almost immediately." We also note that Detective Rose, who was not only the primary investigator, had been to the crime scene and attempted to interview appellant, he also prepared the statement of charges and took vital information from appellant, prior to his transport to Central Booking. Given these circumstances, we conclude that the seizure of the clothing was sufficiently contemporaneous with appellant's arrest to be lawful under the Fourth Amendment.

C. The evidence was admissible under the plain view exception.

But, had we concluded that the seizure of the evidence was unreasonable under the search incident rationale, we agree with the motions court that the blood evidence on appellant's socks and t-shirt was also admissible under the plain view doctrine. In brief:

> "The plain view doctrine of the Fourth Amendment requires that: (1) the police officer's initial intrusion must be lawful ... (2) the incriminating character of the evidence must be 'immediately apparent;' and (3) the officer must have a lawful right of access to the object itself."

Sinclair v. State, 444 Md. 16, 42 (2015) (quoting *In re David S.*, 367 Md. 523, 545 (2002) (citing *Wengert v. State*, 364 Md. 76, 88-89 (2001)); *see also Kentucky v. King*, 563 U.S. 452, 462-63 (2011) ("[L]aw enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made" (citing *Horton v. California*, 496 U.S. 128, 136-140 (1990)).

Again, there is no dispute that the police officer's "initial intrusion" was lawful as there was probable cause to arrest appellant for possessing a stolen vehicle. And, the "incriminating character" of the blood evidence was "immediately apparent" to Detective Rose. "'[I]mmediately apparent' means that an officer must have probable cause to associate the object with criminal activity." *Wengert*, 364 Md. at 89. Detective Rose saw, in his words, the "obscene amount of blood" at the crime scene and testified that he was familiar with the appearance of blood stains on clothing. And, Detective Rose's access to appellant's clothing was lawful, given that he knew that the clothing would ordinarily be collected and stored before appellant was transported to Central Booking. *See Edwards*, 415 U.S. at 804 ("With or without probable cause, the authorities were entitled at that point not only to search Edwards' clothing but also to take it from him and keep it in official custody"). We are persuaded that the seizure of appellant's clothes was reasonable under the plain view doctrine. In addition, we note that "[w]e do not, moreover, hold a stop-watch on a Plain View Doctrine seizure as we do on a search incident to lawful arrest. If the doctrine's conditions are satisfied, the seizure is an investigative entitlement that the

police may come back and redeem at a reasonably subsequent time." *Feaster*, 206 Md. App. at 236. The motions court properly denied the motion to suppress evidence.

II.

Appellant next argues that the trial court erred in giving the pattern instruction on identification, including language that appellant as identified "as the person who committed the crime," on the ground that there was no evidence supporting this instruction. The State responds that appellant affirmatively waived any issue as to the instruction, which he himself requested, and that, even if not waived, there was eyewitness testimony that appellant was stopped driving the victim's stolen Acura. We agree with the State.

Here, after the State's case-in-chief, but before the defense case, the court discussed the proposed instructions with the parties. With respect to this issue, the following ensued:

> THE COURT: 3.30, requested by the Defense, identification of the defendant. I'll give that. But I'll leave out the bracketed part that the witness identified the defendant by X because there's no photo array in this case. Right?
>
> [DEFENSE ATTORNEY #1]: Yeah. Yeah.
>
> THE COURT: So other than that, I'll give it. It was requested by the Defense. . . .[6]

Thereafter, the court instructed the jury, in pertinent part, as follows:

> Now, you've heard evidence about the identification of the Defendant as the person who committed the crime. You should consider the witness's opportunity to observe the criminal act and the person committing it, including the length of time the witness had to observe the person committing the crime, the witness's state of mind and any other circumstance surrounding the event. You should also consider the witness's certainty or

[6] The record does not appear to include any written request or list of proposed instructions by either party.

> lack of certainty, the accuracy of any prior description and the witness's credibility or lack of credibility as well as any other factor surrounding the identification.
>
> Now, the identification of the Defendant by a single witness as a person who committed the crime, if believed, beyond a reasonable doubt can be enough to convict – evidence to convict the Defendant. However, you should examine the identification of the Defendant with great care. It is for you to determine the reliability of any identification and to give it the weight that you believe it deserves.

See also Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* 3:30, at 346 (2012).

At the conclusion of all the instructions, the court asked for exceptions, and the following ensued:

> [DEFENSE ATTORNEY #1]: Your Honor, I just had one. It was about the identification. And I don't believe there was any testimony or evidence that actually identified Antonio Dingle as the person that committed the offense.
>
> THE COURT: Right. Right. They did point to Mr. Dingle. What do you want me to do? I mean, we – just for the record, because we were not on the record, I went through all of the instructions and they were agreeable and acceptable to both parties and that was what – where we are. So what do you –
>
> [DEFENSE ATTORNEY #1]: Actually –
>
> THE COURT: – want me to do at this point? Because I agree with you.
>
> [DEFENSE ATTORNEY #1]: If we could – if there's any way that Your Honor could make an exception to the jury and explain to them that that one particular instruction –
>
> THE COURT: In this case there was no identification –
>
> [DEFENSE ATTORNEY #1]: That's correct, Your Honor.
>
> THE COURT: – of the Defendant as –

[PROSECUTOR]: I'm just trying to –

THE COURT: There was no –

[DEFENSE ATTORNEY #2]: It's a curative.

THE COURT: It's a curative. Or that there's no –

[DEFENSE ATTORNEY #1]: Yes, Sir.

[DEFENSE ATTORNEY #2]: Yeah. There was no – do you agree?

THE COURT: But there was –

[DEFENSE ATTORNEY #2]: The one –

[PROSECUTOR]: I just – I'm not disagreeing with it. I'm just trying to make sure that the wording is –

[DEFENSE ATTORNEY #2]: Okay.

[PROSECUTOR]: – not going to –

THE COURT: Wording it that way is somewhat troublesome.

[PROSECUTOR]: Yes.

THE COURT: Because they identified him in a context –

[PROSECUTOR]: Right.

THE COURT: – that they could – so –

[PROSECUTOR]: I would –

THE COURT: Hold up. There was no –

[PROSECUTOR]: I would request that it would just say that –

THE COURT: No witness who –

[PROSECUTOR]: Witnesses –

THE COURT: – saw –

[PROSECUTOR]: – identified –

[DEFENSE ATTORNEY #2]: Witness. I would –

[PROSECUTOR]: – witness – no, there's two because it's Ulmer as well.

[DEFENSE ATTORNEY #2]: Ulmer had identified a crime? Witnessed –

[PROSECUTOR]: He identified –

[DEFENSE ATTORNEY #2]: – a crime?

[PROSECUTOR]: – the Defendant as the person who was in the vehicle when the car was found. So I – it's not – that gets into some really sticky territory.

[DEFENSE ATTORNEY #2]: Well, oh, my goodness. You mean [illegible] Come on. I understand that part.

[PROSECUTOR]: Yeah.

[DEFENSE ATTORNEY #2]: *Just leave it alone. Let me handle it*.

THE COURT: You're going to handle it in closing?

[DEFENSE ATTORNEY #2]: *I'll handle it*.

THE COURT: Oh, handle it.

[PROSECUTOR]: Okay.

[DEFENSE ATTORNEY #2]: Yeah.

[PROSECUTOR]: Thank you, Your Honor.

[DEFENSE ATTORNEY #1]: Yeah. You'll handle it.

[PROSECUTOR]: The State has not a thing.

THE COURT: All right. That was –

[PROSECUTOR]: Not a thing.

THE COURT: That was [Defense Attorney #2] who said he'll take care of it.

[DEFENSE ATTORNEY #2]: Yes.

[DEFENSE ATTORNEY #1]: Thank you, Your Honor.

THE COURT: Okay.

(emphasis added).

Thereafter, during closing argument for appellant, defense counsel asked the jury "What is the State's evidence? Do they have a witness that saw the crime?" Counsel also pointed out that appellant was Smith's roommate, and that Smith said, "I don't know who did it." As for Flagg, counsel also stated that "[s]he never said she saw anyone do anything." Counsel also noted that the police "never told you they had [an] eye witness to this crime[.]" Counsel continued that there was a "lack of anyone to actually allege this man committed this crime." Counsel concluded by reminding the jury to "[t]hink about what we didn't hear Mr. Smith say. Think about Mr. Smith never once, Mr. Smith, never once accused him of anything. And that's who [the prosecutor's] fighting for. A victim that's not here who's never accused that man of anything."

Maryland Rule 4-325(e) provides, in part, that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." A "principal purpose" of this rule "is to give the trial court an opportunity to correct an inadequate instruction before the jury begins deliberations." *Alston v. State*, 414 Md. 92, 112 (2010) (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)); *see also Vernon v. State*, 12 Md. App. 157, 163 (1971) ("It is not the purpose and design

of the rule to provide an avenue for a party to lay away ammunition in the arsenal of appeal").

This question presents issues of waiver and invited error. Generally, "[i]n Maryland, it is well-settled that waiver is 'the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances.'" *Cain v. Midland Funding, LLC*, 452 Md. 141, 161 (2017) (discussing contractual waiver, and quoting *Hovnanian Land Inv. Grp. LLC v. Annapolis Towne Ctr. at Parole, LLC*, 421 Md. 94, 122-23 (2011)). "The 'invited error' doctrine is a 'shorthand term for the concept that a defendant who himself [or herself] invites or creates error cannot obtain a benefit - mistrial or reversal - from that error.'" *State v. Rich*, 415 Md. 567, 575 (2010) (quoting *Klauenberg v. State*, 355 Md. 528, 544 (1999), quoting *Allen v. State*, 89 Md. App. 25, 43 (1991)). The doctrine is applicable under a number of circumstances, including when "jury instructions [are] specifically requested by the criminal defendant's counsel." *State v. Rich*, 415 Md. at 575; *see also Olson v. State*, 208 Md. App. 309, 366 (2012) (holding that when the jury is instructed with a requested instruction, the invited error doctrine precludes the appellate court from exercising plain error review).

The record reveals that appellant requested the identification instruction originally, and then objected after the instructions were read to the jury. After discussion with the court and comment by the prosecutor, it was the appellant who advanced the resolution, namely, to "handle it" during closing argument. As either invited error or waiver, we concur with the State that this issue is not before us on appeal.

Moreover, and even if it were, we are not persuaded that there was any reversible error. Maryland Rule 4-325(c) provides that "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." "We review a trial judge's decision whether to give a jury instruction under the abuse of discretion standard." *Arthur v. State*, 420 Md. 512, 525 (2011) (citations omitted). In determining whether a trial court has abused its discretion we consider whether "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction." *Bazzle v. State*, 426 Md. 541, 548 (2012) (citation omitted).

Clearly, appellant and his counsel's primary concern was the attempted first degree murder and related charges, but appellant was initially arrested and charged with theft of a motor vehicle after he was stopped while driving the victim's stolen Acura. Officer Ulmer positively identified appellant, in court, as the driver of that vehicle. These facts, including the identification of appellant, were evidence directly related to the motor theft charge and provided an inferential link to appellant's involvement in the other charges. *See, e.g., Molter v. State*, 201 Md. App. 155, 163 (2011) ("[E]xclusive possession of recently stolen goods, absent a satisfactory explanation, permits the drawing of an inference of fact strong enough to sustain a conviction that the possessor was the thief") (citation omitted). We also note that the court instructed the jury "if your memory of the evidence differs from anything that the lawyers or I may say you must rely upon your own memory of the

evidence." Under these circumstances, the trial court did not err or abuse its discretion in giving the requested instruction.

III.

Finally, appellant contends that the evidence was insufficient to sustain all his convictions, except for the two theft convictions, on the ground that the evidence against him primarily was "circumstantial and unreliable." The State responds that appellant did not make this specific argument at trial and that the evidence was sufficient in any event.

Addressing the State's preservation argument, at the end of the State's case-in-chief, appellant's counsel argued that the evidence was insufficient on the grounds that, while there was evidence that "something horrific did happen to Gregory Smith, that evidence still does not show beyond a reasonable doubt that Mr. Dingle did anything to Mr. Smith." Relying on what the court characterized as a "domino effect," counsel argued that there was no evidence linking him to the assault and theft, thereby no evidence linking him to the robbery-related offenses or the remaining charges.

The court ultimately denied the motion, observing that the jury could find that appellant committed the crimes using "all reasonable inferences" and considering both "direct and circumstantial evidence in their totality[.]" In so doing, the court remarked:

> I do not believe that you need to have a – an eye witness or a complaining witness. That we tell the jury that there [are] two types of evidence. We tell them there's direct evidence and there's circumstantial evidence. And we tell them that the law draws no distinction between the weight to be given to circumstantial evidence and not [sic] to be given to direct evidence.
>
> So then the question becomes is there sufficient circumstantial evidence or they have to look at the combination between circumstantial, and

> also that they are allowed to draw inferences that they deem to be reasonable. So viewing it that way, a reasonable juror could determine – and they're finders of fact, so they make all credibility determinations. They can – they could find that the fact that there was – Mr. Dingle made a statement that the guys told him what to do, where to go and to take the car; that Mr. Dingle said during the interview that he was not in – he did not see the guy – he went in but he did not see the guy. Ms. Flagg's testimony that she heard the yelling and the commotion and came downstairs, there was blood everywhere and the only people she saw were Mr. Dingle and Mr. Smith. Mr. Dingle was, according to her if they decide to believe that testimony, Mr. Dingle was in fact there with the guy. And I just – I think the – there's clearly sufficient evidence to go to this jury. So I'm going to respectfully deny.

Ordinarily, a criminal defendant who moves for judgment of acquittal is required by Maryland Rule 4-324(a) to "'state with particularity all reasons why the motion should be granted[,]' and is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135 (1986)). However, Maryland appellate courts have recognized that some motions for judgment of acquittal will be sufficient to preserve an issue for appellate review. *See Bible v. State*, 411 Md. 138, 149-50 (2009) (in a case concerning a charge of sexual offense in the third degree, although defense counsel did not argue specifically that the touching was "for the purpose of sexual arousal or gratification," the sufficiency issue was preserved); *see also Shand v. State*, 103 Md. App. 465, 488-89 (1995) (concluding that general argument that proof of the specific elements of the crimes charged was insufficient adequately preserved sufficiency challenge), *aff'd on other grounds*, 341 Md. 661 (1996); *Bacon v. State*, 82 Md. App. 737, 740-41 (1990) (concluding that sufficiency challenge was preserved where, although the specific argument as to insufficiency may not have been raised by defense counsel, the court clearly considered the issue in denying the motion for

judgment of acquittal), *rev'd on other grounds*, 322 Md. 140 (1991). Our review of the appellant's argument, and the trial court's understanding of that argument, persuades us that the claim that the evidence in this case is primarily circumstantial is properly before us.

Nevertheless, we agree with the State on the merits. In considering a challenge to the sufficiency of the evidence, we ask "'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.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016).

In other words, as an appellate Court, "'[w]e do not re-weigh the evidence,' but, instead, seek to determine 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Haile v. State*, 431 Md. 448, 466 (2013) (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). And, it has consistently been held that "there is no difference between direct and circumstantial evidence." *Mangum v. State*, 342 Md. 392, 398 (1996) (quoting *Hebron v. State*, 331 Md. 219, 225-26 (1993)). Direct and circumstantial evidence are equally persuasive, and any attempt to distinguish between the two forms of evidence uniformly has been rejected. *Mangum*, 342 Md. at 398-99.

In this case, police were called to the home shared by appellant, the victim, and Jessica Flagg. After Flagg woke to the signs of a struggle, she emerged from her bedroom, saw blood everywhere, and saw appellant looking angry, holding a knife and cradling the victim's head in his lap. Soon thereafter, the appellant and Flagg left the residence in appellant's Acura. The Acura was reported stolen after police responded to the scene.

The next day, after the police put out flyers for the stolen Acura, as well as for appellant and Flagg, both individuals were found in possession of that vehicle. Appellant was arrested and taken to the Southwest District police station, where police detectives observed apparent blood stains on one of his socks and his t-shirt. This blood evidence was collected and matched the DNA profile of the victim. When the police found the stolen Acura, a knife was recovered from the vehicle. In addition, appellant told one of the detectives, Detective Witmer, that he was inside the house and was directed to steal drugs and the victim's car by a group of unknown individuals.

Although it is true that there was no direct evidence that appellant assaulted the victim, the circumstantial evidence was more than sufficient for a rational fact finder to come to that conclusion. And, coupled with the direct evidence that appellant was in recent possession of the victim's stolen car, we hold that the evidence was sufficient to sustain appellant's convictions.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.