UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2774

September Term, 2014

LEVAR KINTE CAMPBELL

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 18, 2015

Appellant, Levar Kinte Campbell, was charged by criminal information in the Circuit Court for Wicomico County, Maryland, with possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, and related counts. After he was convicted by a jury on all counts, appellant was sentenced to 25 years without possibility of parole. Appellant timely appealed and presents the following questions for our review:

> 1. Did the circuit court abuse its discretion in not considering appellant's untimely motion to suppress, where, *inter alia*, the motion was untimely through no fault of Mr. Campbell's, the State did not oppose the request to litigate the motion belatedly, the motion could have been litigated without changing the trial date, and the interest of justice demanded hearing the motion?
>
> 2. Did the trial court err in permitting the State to play a portion of Appellant's interview with police in which he invoked his right to remain silent?

For the following reasons, we shall affirm.

BACKGROUND

Because appellant's first question presented concerns the timeliness of a motion to suppress evidence, we shall set forth a chronology of pertinent events.

Chronology

April 5, 2014	-	Appellant arrested by Wicomico County Sheriff's Deputy.
April 6, 2014	-	Charges filed in District Court of Maryland for Wicomico County, Maryland.
April 6, 2014	-	Initial Appearance of Appellant in District Court.

April 9, 2014	-	Appearance of Public Defender, Demand for Chemist, Demand for Speedy Trial, and Request for Discovery filed in District Court.[1]
August 29, 2014	-	Preliminary Hearing in District Court. Probable cause found.
September 4, 2014	-	Criminal Information filed in Circuit Court. Copy mailed to Appellant. Record transmitted from District Court.
September 4, 2014	-	State's Disclosure and Request for Discovery filed in Circuit Court and sent to Appellant.[2]
September 26, 2014	-	Appellant's initial appearance in Circuit Court, without counsel.
October 14, 2014	-	David Moore files Request for Discovery and Motion to Produce Documents.[3]
October 16, 2014	-	State files Answer to Defendant's Request for Discovery, indicating that discovery was provided to Moore on October 15, 2014.
November 19, 2014	-	Sandra Fried enters appearance on behalf of Appellant, and files Request for Discovery, Motion to Produce Documents, and Motion to Suppress.[4]

[1] No motion to suppress filed.

[2] State indicates that it was not in possession or otherwise aware of specific searches and seizures, acquisitions of statements, or pre-trial identifications.

[3] No entry of appearance filed; no motion to suppress filed.

[4] Defense counsel Fried's motion to suppress contends evidence seized by illegal search and seizure and that any statements were involuntary and/or elicited during custodial interrogation without proper procedural safeguards.

November 24, 2014	-	David Moore formally enters appearance on behalf of Appellant. Motion to Suppress filed.[5]
November 24, 2014	-	Moore files Joint Motion with State to Schedule Hearing for Motion to Suppress.
November 26, 2014	-	Order filed on Joint Motion to Schedule Hearing, stating "Counsel, 4-252 Motions are untimely filed as initial appearance was 9/26/14."
December 2, 2014	-	State's Motion for Hearing to Clarify Counsel.
December 22, 2014	-	Motions Hearing (see *infra*). Moore's motion to strike appearance granted. Court denies Motion to Suppress.
December 23, 2014	-	Written Order denying Motion to Suppress filed.
January 13, 2015	-	Jury trial. Appellant convicted on all counts. Sentenced as subsequent offender to 25 years without parole.
February 10, 2015	-	Notice of appeal filed.

Motion Hearing

At the start of the motions hearing, Defense Counsel Moore moved to strike his appearance, in favor of Defense Counsel Fried. Simultaneously, Moore gave Fried the discovery materials that were given to him by the State on or around October 15, 2014.

[5] Defense counsel Moore's motion seeks suppression of all evidence and statements obtained as result of illegal arrest or detention, and suppression of statements under Fifth and Sixth Amendments.

Pertinent to the issue on appeal, the court then noted that the appellant's initial appearance in the circuit court was September 26, 2014, and that the first filing of a motion to suppress was beyond thirty days later, or on November 19, 2014. When asked for an explanation of the late filing, the State proffered that appellant's first counsel, Moore, had informed him "that it was largely a scheduling error with a new secretary, and accidental." After noting that it had not filed a motion to set aside the suppression motion due to an untimely filing, the State informed the court that it would "not be opposed to the motions hearing if the Court felt that it was appropriate." The court then clarified:

> THE COURT: All right. There was a joint motion to schedule a hearing for a motion to suppress on November 24, 2014, and it recites that defense counsel entered his appearance simultaneously and the motion to suppress with the filing of this motion, Assistant State's Attorney . . . joins in the filing of the belated motion and consents to the scheduling of a motion to suppress. Counsel requests that this hearing be scheduled before December 18, 2014, and trial in this matter is scheduled for January 13th, 2015. And it was at the bottom of that that I indicated that they're not timely.
>
> Yes, my understanding, and you'll correct me if I'm wrong is that Mr. Moore's [Defense Counsel's] representation was that he filed discovery on behalf of his client, his belief was that his office had filed both the entry of appearance, request for discovery, and the mandatory motions.
>
> MR. BRUECKNER [PROSECUTOR]: Correct.
>
> THE COURT: But due to his clerical staff not filing everything that he expected to be done, those were not filed. And that when Ms. Fried [Defense Counsel] entered her appearance and filed a motion is when it became apparent that there was a problem for the first time.
>
> Is that everybody's understanding of what happened?

MR. BRUECKNER: That is, Your Honor.

Mr. MOORE: Yes, Your Honor.

THE COURT: Sir, is that your understanding as well?

THE DEFENDANT: Yes, sir. I mean yes, ma'am.

After considering *Pugh v. State*, 103 Md. App. 624, *cert. denied*, 339 Md. 355 (1995), the court framed the issue before it as follows:

> So at this point I would have to find good cause. And the good cause would have to be that there was an oversight in the Defendant's representation, or in counsel, that they failed to file the motions and that they failed to notice the fact that the motions were not filed in the timeframe allotted, and that the State doesn't object.

The State then contended that the deadline for filing mandatory motions was actually November 15, 2014, and that the first motion to suppress was only filed four days later, on November 19, 2014. When the court reminded the State that the deadline for filing mandatory motions was based on "the first appearance of the Defendant *or* his counsel," the State maintained that the starting date for purposes of calculating the thirty days was October 13, 2014. (emphasis added). After the State suggested that this case involved a narrow time frame, the court then inquired as follows:

> THE COURT: Yes, we have. I suppose that the question also goes to whether the reason given is something that I'm prepared to recognize as good cause from this point forward and whether your failure to object will be relevant to that consideration, because, you know, the State's failure to object in this case, are you willing to waive your right to ever object to such a claim in every case in the future?

> MR. BRUECKNER: No, Your Honor. The State would not couch it as a failure to object but a reasoned –
>
> THE COURT: Or a consent, however you want to put it.
>
> MR. BRUECKNER: – right, that the State has looked at the totality of the chain of events in this case and made that decision not to object, which the State believed to be in the interest of fairness to Mr. Campbell in this specific set of facts as they transpired. Certainly not in every case.

The court then inquired, if it were to "grant the motion, what effect would that have on the process of the trial date?" The State responded that the parties could go to the Assignment Office to pick a new motions date. However, the State was concerned because there was a codefendant in this case, and the codefendant's trial was set to be held after appellant's trial date. The court indicated that trials are not scheduled in order to "please the State's order of preference," and the question was whether trial could proceed as scheduled. The prosecutor then stated that it was "adamantly opposed to moving the trial date, if we can hear motions prior to the trial date."

After the court again suggested that the parties go speak to the Assignment Office, Defense Counsel Fried suggested that motions could be held before the scheduled trial date. Counsel then informed the court that the motion to suppress concerned the lawfulness of a traffic stop of a vehicle in which appellant was a passenger. The vehicle was stopped because the occupants and the vehicle allegedly matched the description of a similar vehicle that was involved in a robbery. Counsel contended, briefly, that the stop was unlawful.

The court then indicated it would take a short recess but first asked if there was anything else that Defense Counsel wanted to add to the consideration of good cause to excuse the untimely motion. Counsel informed the court that, for purposes of judicial economy, she had a similar situation involving a different client and a motion that was improperly filed, and that client received a subsequent motions hearing after postconviction. It was her argument that, ultimately, appellant would also prevail in a postconviction proceeding. The court responded:

> THE COURT: Well, that assumes that he would be found guilty. And part of why we don't try a post-conviction matter as part of a trial is that the Defendant is presumed innocent. If he is not convicted, it's all moot.
>
> MS. FRIED: I understand that and –
>
> THE COURT: Otherwise, we just do post-conviction hearings pre-trial all the time, and then, you know, we can just decide, well, the outcome of the post-conviction hearing is this at the trial level so we're just going to do that now. And that's really not my understanding of the way the Court is supposed to operate.
>
> But I do appreciate the fact that, I understand what you're saying that if it's going to be, in the event of a conviction, and assuming he's not successful on the motion to suppress, so assuming he's not successful on the motion to suppress or assuming that he doesn't have the right to a motion to suppress, and assuming he goes to trial and assuming he gets convicted and assuming he doesn't win on appeal and assuming, and then assuming, then we have a post-conviction issue which might be meritorious.

After the court took a brief recess, the parties returned and informed the court that the Assignment Office had set aside a motions date that would occur six days prior to the previously scheduled trial date. Nevertheless, the court ruled that the motion to suppress

was untimely and that there was no good cause to excuse the late filing. In so ruling, the court expressly found, contrary to the State's calculations, that the 30 day deadline ran from Appellant's initial appearance in Circuit Court on September 26, 2014, and that the motion to suppress was untimely filed. The court stated:

> I do not believe that it is good cause to tell the Court, the reason I didn't file the motion was because I directed my secretary to do something and she did not. Counsel are required to sign their pleadings. That's one of the reasons they're required to sign their pleadings, is to make sure that the pleadings that get signed are the appropriate ones.

The court continued by addressing whether the motion to suppress would be timely under that portion of the rule that permitted filing a certain number of days after discovery is provided:

> And this case was generated in the District Court, so there were, you know, documents and so forth that were no doubt not the complete set of discovery. But even if discovery were to have generated identification of the issue, the State provided discovery to Mr. Moore on October 14th, 2014. And if it were the five days, you know, from October 14th, 2014, that we use for discovery generating it, then we have a deadline of October 20th for the filing, which was the Monday following the Sunday, that would be the 19th. And even if it were mailed that would be October 23rd. So the October 27th deadline, which was the original 30 days from the date of the initial appearance is still later than those dates.

The court then ruled:

> I am unable, under these circumstances, to find good cause due to a mistake because it's impossible for the Court to distinguish how this case would be different from every other case where someone knows that they have the obligation to file a motion and does not do so; to make that the standard for good cause seems to me to put at risk the reason for the rule because an explanation for why he didn't file the motion in time, you simply say, well,

> somebody on my staff didn't tell me, or didn't do what I told them to do. And notwithstanding the fact that we each have the obligation to make sure that our work is done as directed.

The court also found that good cause did not depend on the merits of the underlying motion to suppress. And, the court also acknowledged that the State did not oppose the motion, but that:

> I would hate to think that the basis for the finding of good cause in each case would be dictated by whether the State agreed to the hearing of the motion or not, because at that point I believe what the Court is doing is simply deferring to the State. And that is not the role of the Court. The Court is to decide on the merits whether there is good cause.

The court stated that it was "unwilling to find good cause under the circumstances." However, one last time, the court gave the parties the opportunity to cite a case that "would indicate that the exercise of my discretion under facts similar to these constitute an abuse of discretion . . ." After hearing no response, the court ruled that "the motions are untimely and are not excused by good cause."

The court memorialized this ruling from the bench in a written order. That order recounted the relevant chronology of events and arguments of counsel, cited Maryland Rule 4-252, and concluded by reiterating that the court found that the motion to suppress was untimely and that good cause did not exist to excuse the untimely filing.

Trial

On April 5, 2014, at approximately 5:32 p.m., Sergeant Michael Kelly Matthews heard a radio report that an armed robbery had just occurred in Princess Anne, and that a

small white vehicle, possibly a Honda or Toyota, occupied by an African-American male and an African-American female was possibly involved. About twenty minutes later, Sergeant Matthews saw a white Nissan sedan, with North Carolina tags, pass by his location on the Route 13 bypass near Salisbury. Sergeant Matthews ran the tags and determined that this was a rental vehicle. The officer followed this vehicle, and stopped it after the driver followed another vehicle too closely and failed to give proper notification of a turn.[6] When he approached the vehicle on foot, Sergeant Matthews encountered appellant, the front seat passenger, and Shana Ewell, the driver. Appellant was looking straight ahead and avoiding eye contact. And, his hands were shaking and it appeared he was breathing heavy. Appellant was unable to produce identification but did provide his name and date of birth.

After another officer, Corporal Howard Phillips, arrived on the scene, Sergeant Matthews asked a K-9 officer to respond to the scene of the stop. While Sergeant Matthews was checking the license and registration for this rental vehicle, Deputy David Crowell arrived with his K-9, Norbee, and scanned the vehicle. Deputy Crowell testified that he arrived within a couple minutes after the call for a K-9 to respond was transmitted. After the dog gave a positive alert, the officers searched the subject vehicle and found a small

[6] *See* Md. Code (1977, 2012 Repl. Vol.), §§ 21-310 (Following Too Closely), 21-604 (Turning, Slowing and Stopping Movements; Required Signals), of the Transportation Article.

glassine baggie of suspected cocaine in the center console near the front passenger area. In addition, a jar and a plastic container containing marijuana was found in the vehicle's trunk.

Both parties stipulated that marijuana and cocaine were recovered from the Nissan during the stop. In addition, $5,244, in various denominations of U.S. currency, was found in a size 46 jean jacket located on the back seat. No drug paraphernalia was found in the vehicle nor on appellant's person. An expert in narcotics offered his opinion, without objection, that based on his training and experience, that the evidence recovered in this case was consistent with being associated with a "middle level dealer about to be distributed to persons in or around here in Wicomico County or to Maryland for that fact."

After appellant and Ewell were arrested, transported to the police station and read their rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), appellant agreed to speak to Sergeant Matthews. A copy of the interview was played for the jury.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant asserts that the motions court erred in not finding good cause to belatedly litigate a motion to suppress. The State responds that the trial court properly exercised its discretion in declining to find good cause to excuse an untimely filing. We concur.

Maryland Rule 4-252 provides, in part:

> (a) **Mandatory motions**. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:
>
> (1) A defect in the institution of the prosecution;
>
> (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
>
> (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
>
> (4) An unlawfully obtained admission, statement, or confession; and
>
> (5) A request for joint or separate trial of defendants or offenses.
>
> (b) **Time for filing mandatory motions**. A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

The Court of Appeals has explained that Rule 4-252 "embodies 'this Court's desire that evidentiary rulings on the suppression of evidence be made before trial.'" *Jones v. State*, 395 Md. 97, 113 (2006) (quoting *Long v. State*, 343 Md. 662, 668 (1996)). In accordance with this principle, we recently held that, if a defendant fails to raise a ground seeking suppression of evidence, in a timely manner, the defendant has waived his or her right to appellate review of that issue. *Carroll v. State*, 202 Md. App. 487, 513 (2011), *aff'd on other grounds*, 428 Md. 679 (2012).

Md. Rule 4-252 (b) requires that a motion to suppress "shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court[.]" Md. Rule 4-252 (b). There is a further exception which permits a motion to be filed within 5 days after discovery is provided when that discovery provides a basis for a motion. *Id*. Failure to file a timely motion results in a waiver "unless the court, for good cause shown, orders otherwise[.]" Md. Rule 4-252 (a).

In this case, the first appearance of the appellant in court was on September 26, 2014. As this was earlier than the first filed entry of appearance of counsel, *i.e.*, Ms. Fried on November 19, 2014, and even earlier than the first filing of counsel, *i.e.*, Mr. Moore on October 14, 2014, appellant had thirty days from September 26, 2014, or October 26, 2014, to file a mandatory motion under Rule 4-252. Because October 26, 2014 fell on a Sunday, that deadline was extended by Maryland Rule 1-203 to October 27, 2014. The first motion to suppress was filed by Ms. Fried beyond this deadline, on November 19, 2014, therefore, it was untimely under the rule. This was also true of the motion to suppress that was filed by Mr. Moore on November 24, 2014.[7]

[7] As the motions court recognized, a motion may be filed within five days after discovery reveals a basis for said motion. Rule 4-252 (b). In this case, discovery was provided by the State on October 15, 2014. Appellant is not afforded any relief by the discovery exception because that rule required filing of a motion on or around October 20, 2014, earlier than the 30 day deadline after appellant's initial appearance in court.

Accordingly, in order for the motion to be considered, the court needed to find good cause to excuse the late filing. A defendant bears the burden of showing good cause. *Davis v. State*, 100 Md. App. 369, 385 (1994). A trial court's good cause determination "is entitled to the utmost respect and should not be overturned" absent a clear abuse of discretion, "even if we might have reached a different result." *Pugh*, 103 Md. App. at 656-57 (cases cited therein). "Failure to make a mandatory motion within the prescribed time limits, absent good cause to forgive the dereliction, bars all claims, even those full of constitutional merit." *Id*. at 656. *See also Grandison v. State*, 305 Md. 685, 711(1986) ("[A] statutory requirement of 'good cause' vests the trial court with wide discretion").

The abuse of discretion standard is a high hurdle for appellate courts to overcome as that standard of review is highly deferential. The Court of Appeals has stated that "'[a]buse of discretion' . . . has been said to occur 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 135 S. Ct. 284 (2014). Further:

> [A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective. That, we think, is included within the notion of

> 'untenable grounds,' 'violative of fact and logic,' and 'against the logic and effect of facts and inferences before the court.'"

McLennan v. State, 418 Md. 335, 353-54 (2011) (quoting *Gray v. State*, 388 Md. 366, 383-84 (2005)) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005)) (quoting *North v. North*, 102 Md. 1, 13-14 (1994)).

This Court has also stated:

> The Court of Appeals has defined the abuse of discretion standard as "'a reasonable decision based on the weighing of various alternatives.' There is an abuse of discretion 'where no reasonable person would take the view adopted by the [trial] court.'" *Metheney v. State*, 359 Md. 576, 604, 755 A.2d 1088 (2000), quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312, 701 A.2d 110 (1997). Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.

Fontaine v. State, 134 Md. App. 275, 288, *cert. denied*, 362 Md. 188 (2000); *see Thodos v. Bland*, 75 Md. App. 700, 717 ("Were we ruling upon appellant's new trial motion, we would have unhesitatingly granted it. Nevertheless, we are unable to rationalize a basis for finding that the trial judge abused his discretion"), *cert. denied*, 313 Md. 689 (1988); *see also Roy v. Dackman*, __ Md. __, No. 6, Sept. Term 2015, 2015 WL 6108017, at *14 (filed Oct. 16, 2015) ("When a trial court ruling is assessed on an abuse of discretion standard, this means that there is not necessarily one right answer, nor is the trial court required to come up [with] the best answer or the answer preferred by the appellate court") (McDonald, J., dissenting).

Instructive is the recent case of *Sinclair v. State*, 444 Md. 16 (2015). There, police conducted a warrantless search of a cell phone in Sinclair's possession at the time he was

arrested in connection with an armed carjacking case. *Sinclair*, 444 Md. at 21. Found on that phone, and later admitted as evidence at trial, was a distinctive photograph of the stolen vehicle's wheel rim and fender. *Id*. The issue on appeal was whether the search of the phone and the admission of the photograph violated the Fourth Amendment. *Id*. at 27.

Prior to trial, an assistant public defender filed an omnibus motion, which included a motion to suppress this evidence, at the same time he entered his appearance on Sinclair's behalf. *Sinclair*, 444 Md. at 23-24. Prior to trial, this motion was "withdrawn without prejudice." *Id*. at 25. On the date originally scheduled for trial, the assistant public defender withdrew his appearance in favor of private counsel recently retained by Sinclair. *Id*. On the rescheduled subsequent trial date, and as the jury venire was on its way to the courtroom, Sinclair's counsel then moved *in limine* to exclude the cell phone photographs. *Id*. at 25-26. The State opposed the motion on the grounds that the search was a valid search incident to arrest and because "time has been passed and so on and so forth so I had no notice that this will be raised." *Id*. at 26. The trial court denied the motion, stating simply that the search was a valid search incident to arrest, without making any findings of fact. *Id*.

In the Court of Appeals, the State contended that Sinclair waived any challenge to the photograph on the cellphone because the motion violated Maryland Rule 4-252. *Sinclair*, 444 Md. at 27. The Court of Appeals began by explaining the rule as follows:

> Maryland Rule 4-252 provides for the orderly resolution of suppression motions. Pertinent to this case, a motion to suppress evidence on the ground that it was obtained in violation of the Fourth Amendment must normally be

> filed within 30 days of the first appearance of the defendant; it may be filed later if the basis for the motion only becomes evident from discovery, in which case the motion must be filed within five days. As to content, the motion must ordinarily be in writing, state the basis for suppression of evidence, and set forth the legal authority on which it is based. A written response by the State must be filed promptly and also provide supporting legal authority. A court should resolve the motion before the trial – ideally before the day of trial – and make any necessary fact findings on the record. A deviation from these requirements must be justified by "good cause."

Sinclair, 444 Md. at 28-29.

The Court further explained:

> The rule is thus designed to facilitate the fair consideration of a suppression motion in advance of trial. "The obvious and necessary purpose of [Rule 4-252(e)] is to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it." *Denicolis v. State*, 378 Md. 646, 660, 837 A.2d 944 (2003); *see also Jones v. State*, 395 Md. 97, 116, 909 A.2d 650 (2006) ("a defendant must state sufficient information to put the court and State on notice of the evidence he or she wishes to suppress and the basis therefore. Neither the trial court nor the prosecutor should be surprised at the hearing.").

Sinclair, 444 Md. at 29 (footnote omitted).

Moreover, the Court made clear that "[t]he rule's directive to file and litigate suppression motions in advance of trial was a deliberate policy decision of this Court." *Sinclair*, 444 Md. at 29 n. 15. Noting that a prior rule was discretionary, the Court of Appeals stated that, the Court made the rule mandatory in order to establish that the "[f]ailure to file a timely motion would result in a waiver, unless the court found good cause to order otherwise." *Id*. *See also Savoy v. State*, 218 Md. App. 130, 143 (2014) ("Rule

4-252, previously Rule 736, was patterned after Rule 12 of the Federal Rules of Criminal Procedure. Both rules are similar in providing that motions to suppress must be filed pre-trial and a failure to raise timely objections to the admissibility of an alleged illegal confession constitutes a waiver").

However, the *Sinclair* Court also observed that there was some leeway still built into the modern rule:

> Although Rule 4-252 is unambiguous in setting a time limit and requiring some detail as to the basis for a suppression motion, it also grants trial courts discretion to hear noncompliant motions "for good cause shown." In *Denicolis*, this Court observed that some trial courts allow defense counsel to file timely an omnibus motion "seeking a panoply of relief based on bald, conclusory allegations devoid of any articulated factual or legal underpinning," and later supplement that motion to flesh out the specific grounds at or before a motions hearing. 378 Md. at 660, 837 A.2d 944. Courts exercise their discretion to hear those noncompliant motions in light of "the time constraints under which defense counsel and pro se defendants often operate." *Id*. The Court acknowledged that "[a]lthough that practice is not what the Rule anticipates and is not to be encouraged, we have not disturbed the discretion of the trial courts to permit [that practice], at least where the State is not unduly prejudiced." *Id*.; *see also Phillips v. State*, 425 Md. 210, 216 n. 4, 40 A.3d 25 (2012); *Jones* 395 Md. at 103 n. 3, 909 A.2d 650.

Sinclair, 444 Md. at 30.

The Court then observed that, in Sinclair's case, although the original "omnibus" motion may have been timely, "it did not specifically seek suppression of evidence derived from his cell phone nor did it provide factual allegations or legal authority to support such an action." *Sinclair*, 444 Md. at 31. Further, even after the State provided further discovery,

defense counsel did not file a timely supplemental motion under Rule 4-252 (b). *Sinclair*, 444 Md. at 31. Instead, the omnibus motion was simply withdrawn without prejudice. *Id*. at 31-32. Although new counsel alerted the court to the possibility of motions when he thereafter entered his appearance, he failed to file any such motions prior to trial and acquiesced in the cancellation of the pretrial motions hearing. *Id*. When counsel did raise a motion to suppress on the day of trial, the State protested that the motion was untimely, and the Court of Appeals agreed. *Id*. at 32. The Court also observed that "[d]efense counsel did not suggest any particular reason for failing to comply with the rule, and the court did not make a finding of good cause. Ordinarily, that would mean that the motion was waived." *Id*.

The Court also rejected the notion that the trial court implicitly found good cause to excuse non-compliance with the rule and exercised its discretion to hear the belated motion. *Sinclair*, 444 Md. at 33. But, the Court indicated that it did not intend to restrict the ability of trial courts to find good cause to excuse an untimely motion in other cases. *Id*. The Court then noted:

> It is understandable that a trial court, presented with a suppression motion on the morning of trial, will be tempted to resolve the motion substantively – particularly if the motion appears to lack merit – and avoid the Monday morning quarterbacking that future post-conviction litigation may entail. Here, however, the issue was not a simple one and the belated raising of the issue resulted in a motions hearing that substituted a very brief proffer for factfindings, and a legal argument in which one side presented detailed

> summaries of out-of-state cases without citation and the other side alluded to an unnamed federal case.

Id. at 33 n. 20.

The Court also did not accept the contention that the prosecutor was not prejudiced in responding to the belated motion to suppress the photographs on Sinclair's cellphone. *Sinclair*, 444 Md. at 34. The Court stated:

> [T]he failure to comply with the rule resulted in a truncated motions hearing with the jury panel at the door. The only "facts" developed at the motions hearing – the record to which we are limited in considering the trial court's ruling – was the proffer by Mr. Sinclair's counsel that "[t]he law enforcement officer opens the cell phone, goes through it, and apparently pulls out what purports to be some photographs." Here, Mr. Sinclair's failure to comply prejudiced the State by depriving it of the opportunity to develop an appropriate record.

Id.

The Court continued:

> [E]vidence adduced at a pretrial motions hearing is often more detailed and quite distinct from what is presented to a jury at trial. A pretrial suppression hearing will necessarily explore details of an arrest or search that have no bearing on a trial jury's determination of guilt or innocence. This Court has been skeptical of the notion that a trial record provides an adequate substitute on which to decide a belated suppression motion. *See Perry v. State*, 344 Md. 204, 226-27, 686 A.2d 274 (1996) ("Even though [the defendant] is now willing to treat the trial record as a suppression hearing record, that waiver cannot deprive the State of the procedure to which it is entitled.").

Sinclair, 444 Md. at 34-35 (footnote omitted).

The Court concluded by observing that the situation contemplated by Denicolis was when a "bare-bones" suppression motion is supplemented by a more specific motion before

or at the motions hearing. *Sinclair*, 444 Md. at 35. Whereas Sinclair not only did not file a supplement but actually withdrew even the original bare-bones omnibus motion, and where the motions hearing was cancelled before trial, the Court agreed that the issue was waived. *Id*.[8]

We also receive guidance from *Pugh*, *supra*, a case where Pugh was convicted as a drug kingpin, defense counsel filed a motion to suppress over two months after Pugh's initial appearance in court. *Pugh*, 103 Md. App. at 656. In seeking to excuse the untimely motion, defense counsel argued good cause existed because two months was less than the two years that was considered untimely in *Allen v. State*, 91 Md. App. 775 (1992), *overruled on other grounds by Stratemeyer v. State*, 107 Md. App. 420 (1995). *Pugh*, 103 Md. App. at 656. Counsel also argued that "Pugh's out-of-state counsel 'had a very hectic schedule,' and that it was difficult for [co-defendants] to 'get together ... funds to retain counsel, get ... counsel to coordinate with local counsel, get that counsel admitted and make ... motions within thirty days.'" *Id*.

This Court upheld the trial court's decision to strike the untimely motion to suppress, stating:

[8] The Court then went on to address the merits of the issue, in the alternative, concluding that admission of one of the photographs found on the cellphone was admissible under the plain view doctrine, and that admission of the remainder of the photographs amounted to harmless error. *Sinclair*, 444 Md. at 42-43, 45.

> On review, we cannot substitute our judgment for that of the trial court, even if we might have reached a different result. The trial court did not abuse its discretion in granting the State's Motion to Strike or in finding that good cause had not been established.

Pugh, 103 Md. App. at 657.

This Court also noted:

> We observe that the State's case depends largely on the drugs discovered during the alleged consensual search of the trunk. In the context of this case, a motion to suppress the search may have been important. The issue of whether counsel was ineffective for failing to file a timely motion to suppress has been raised by Pugh as an issue on appeal, but we have said that it is best left to the post conviction court. We decline to speculate on the merits of such a motion.

Pugh, 103 Md. App. at 657 n. 16.

We are unable to conclude that the motions court abused its discretion in declining to find good cause to excuse the untimely filing of a motion to suppress in this case. In attempting to meet its burden, the appellant suggested the late filing by Mr. Moore was primarily due to "a scheduling error with a new secretary," and that failure to file the mandatory motion was "accidental." The other reason asserted was because the State was not opposed to the late filing by appellant.[9]

[9] The focus of the court's ruling was on whether to excuse Mr. Moore's late filing of a motion to suppress on November 24, 2014. The ruling did not address whether good cause excused the late filing by Ms. Fried, filed on November 19, 2014. Notably, that was the same day Ms. Fried entered her appearance. Earlier in the hearing, the court did recognize the circumstances where two attorneys enter appearances on behalf of the same client. The court stated:

(continued...)

Defense counsel sought to excuse the late filing because a member of his staff apparently did not file the motion to suppress at the same time a request for discovery was filed. We are not persuaded that the court's rejection of this as "good cause," was an abuse of discretion. Rule 1.3 of the Maryland Rules of Professional Conduct provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The Court of Appeals has found violations of this rule when a lawyer fails to file a timely motion on a client's behalf. *See Attorney Grievance Comm'n v. Gisriel*, 409 Md. 331, 371 (2009) (citing *Attorney Grievance v. Awuah*, 374 Md. 505, 516 (2003)). This duty also extends to nonlawyer assistants, such as secretaries. *See* Rule 5.3; *see also Attorney Grievance Comm'n of Maryland v. Shephard*, 444 Md. 299, 322 (2015) ("MLRPC 5.1 and 5.3 govern a lawyer's responsibilities regarding supervision of subordinate lawyers and nonlawyer assistants. Subsection (c) of each of those rules, respectively, makes a lawyer vicariously responsible for a subordinate lawyer's violation of another rule or a nonlawyer's conduct

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[9](...continued)

> [O]ften we have at the last moment private counsel substituting their appearance for a Public Defender or we have a new attorney who comes in and substitutes their appearance for existing counsel, so if that were the rule then every time there was a change of counsel, we would have a brand new opportunity not only to litigate the motions previously litigated but we could even litigate the new motions that were seen by new counsel. So, I don't believe that it's the change of counsel that registers the rule. . . .

See Allen, 91 Md. App. at 780 ("The later appearance of other counsel does not revive the 30–day period in which to file such a motion").

that, if performed by a lawyer, would constitute a violation of another rule"), *reconsideration denied* (Sept. 17, 2015).

The only remaining argument presented to the court to excuse the late filing was because the State did not object. The record indicates that the court, as with the other basis, considered this reason and exercised its discretion in finding that was inadequate to provide good cause. We discern no abuse of the court's discretion. *See*, *e.g.*, *Eastman v. State*, 47 Md. App. 162, 163-64 (1980) (declining to find an abuse of discretion where defendant argued that good cause was supported by prosecutor's agreement not to object to a late filing, stating, "the agreement not to object appears to have been an agreement not to rub salt in the already exposed wound of appellant; a gentlemanly accommodation to avoid embarrassing appellant by declining to emphasize the rule violation"). We hold that the motions court properly exercised its discretion in finding that there was no good cause to excuse the belated filing of a mandatory motion to suppress in this case.

II.

Appellant next contends the court erred in admitting evidence of a post-arrest statement he made after he invoking his right to silence. In support of this argument, appellant cites *Doyle v. Ohio*, 426 U.S. 610, 619 (1976), wherein the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibits prosecutors from impeaching criminal defendants with their decision to remain silent after warnings had been given pursuant to *Miranda*, *supra*. *See Lupfer v. State*, 420 Md. 111, 124 (2011)

(noting "the dangers of introducing at trial the fact that a defendant in a criminal case decided not to speak to law enforcement personnel . . ."); *Marshall v. State*, 415 Md. 248, 261 (2010) ("[T]he federal constitutional right against compelled self-incrimination prohibits prosecutorial comment on the accused's silence or failure to testify") (citations omitted); *Kosh v. State*, 382 Md. 218, 220 (2004) ("Post-arrest silence is inadmissible as substantive evidence of a criminal defendant's guilt, regardless of whether that silence precedes the recitation to the defendant of *Miranda* advisements").

The State responds that this issue is not preserved for appellate review because appellant waived the issue when similar evidence came in without objection. We agree and conclude the issue was not properly preserved.

During Sergeant Matthews' direct examination, the video of appellant's interview was played for the jury. After appellant waived his *Miranda* rights, he spoke with Sergeant Matthews. The following reflects pertinent portions of the recorded exchange between appellant and Sergeant Matthews, as well as the live in-court proceedings between the parties and the court:

> SERGEANT MATTHEWS: Okay. Basically how long have you been dating this girl?
>
> MR. CAMPBELL: For awhile.
>
> SERGEANT MATTHEWS: For awhile. All right. Do you use marijuana?
>
> MR. CAMPBELL: No.

SERGEANT MATTHEWS: What's the deal with the marijuana and the cocaine (inaudible) the car today?

MR. CAMPBELL: (Inaudible).

SERGEANT MATTHEWS: (Inaudible).

MR. CAMPBELL: *I'm not answering that question*.

SERGEANT MATTHEWS: Okay, if that's your choice.

SERGEANT MATTHEWS: Let me ask you this, is it yours or hers?

MR. CAMPBELL: *I'm not answering that question*.

MS. FRIED [DEFENSE COUNSEL]: Objection, Your Honor.

(Recording was stopped.)

THE COURT: Is that all?

MR. BRUECKNER [PROSECUTOR]: There was another minute and ten seconds to be played.

(Whereupon, counsel and the Defendant approached the bench and the following occurred at the bench:)

MS. FRIED: He just invoked his right to answer questions.

THE COURT: What did he say?

MR. BRUECKNER: He was advised during *Miranda* he didn't have to answer any questions he does not wish to answer. He said I do not want to answer that question, the officer said okay and went to the next question.

THE COURT: He invoked his right not to answer that question. All right. Did he make other statements?

MR. BRUECKNER: Yes, there's another one minute and 10 second?

THE COURT: All right, go ahead.

(Whereupon, counsel and the Defendant returned to the trial tables and the following occurred in open court:)

(Resumed playing the DVD).

SERGEANT MATTHEWS: All right, because she's going to be charged with the same thing. Then I'm asking you if she had knowledge of it, whether she had no knowledge of it.

MR. CAMPBELL: *I'm not answering*.

SERGEANT MATTHEWS: Okay. There's not much we can do as far as charges for her then, she's going to probably take the same charges as you.

MR. CAMPBELL: All right.

SERGEANT MATTHEWS: You cool with that?

(Recording was turned off.)

(Emphasis added).

"[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *see* Maryland Rule 4-323 (a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived"); *see also Bruce v. State*, 328 Md. 594, 628 (1992) ("Counsel cannot wait to see whether the answer is favorable before deciding whether to object." (citation omitted)), *cert. denied*, 508 U.S. 963 (1993).

And, "if opposing counsel's question is formed improperly or calls for an inadmissible answer, counsel must object immediately." *Fowlkes v. State*, 117 Md. App. 573, 587 (1997) (citing *Bruce*, 328 Md. at 627-28), *cert. denied*, 348 Md. 523 (1998); *see also Prince v. State*, 216 Md. App. 178, 194 ("[T]here is no bright-line rule to determine when an objection should be made. But the objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time") (citation omitted), *cert. denied*, 438 Md. 741 (2014);*Wimbish v. State*, 201 Md. App. 239, 261 (2011) ("[T]o preserve an objection, a party must either 'object each time a question concerning the [matter is] posed or ... request a continuing objection to the entire line of questioning'") (quoting *Brown v. State*, 90 Md. App. 220, 225 (1992)), *cert. denied*, 424 Md. 293 (2012). *Cf. Randall v. State*, 223 Md. App. 519, 576 (2015) (holding that defense counsel did not lack diligence and "sit back," until it was too late; the objection was prompt, gave the court the opportunity to correct any error, and timely moved to strike before the next question).

We are guided by *Williams v. State*, 99 Md. App. 711 (1994), *aff'd*, 344 Md. 358 (1996). In that case, the appellant contended that the trial court erred in permitting evidence of appellant's post-arrest, pre-*Miranda* silence. *Williams*, 99 Md. App. at 716. This Court concluded the issue was not preserved based on the following exchange:

> [PROSECUTOR]: Did you tell the police officers that Miss Jones could vouch for your whereabouts?
>
> [APPELLANT]: No, I haven't. I told my lawyer.

> [PROSECUTOR]: Did you tell the State's Attorney's Office?
>
> [APPELLANT]: No.
>
> [DEFENSE COUNSEL]: Objection, Your Honor; the defendant has no necessity of talking to the police or the State.
>
> THE COURT: I realize that. The objection is overruled.

Williams, 99 Md. App. at 716-17.

We observed that appellant failed to object after the first question on the subject was asked and failed to timely object after the second question was asked. *Williams*, 99 Md. App. at 717. We then cited *Bruce*, *supra*, noting "the preservation requirements for this sort of objection are very strict," and that "if the objectionable nature of the question is clear, the objection must be immediately forthcoming before the answer is given." *Williams*, 99 Md. App. at 717. Further:

> In the *Bruce v. State* case itself, it was held that defense counsel should have spotted immediately that the question was objectionable. The failure to make an immediate objection, therefore, was deemed to be a waiver of the objection. As Judge Chasanow explained, 328 Md. at 629, 616 A.2d at 409:
>
> > The question in the instant case, then, is whether or not Bruce's counsel could or should have known from the question that the answer would be objectionable. We believe that *Bruce's counsel should have been able to anticipate the type of answer called for by the question and thus should have been able to perceive grounds for an objection as soon as the question was asked -- before the answer.* (emphasis supplied).

Williams, 99 Md. App. at 718.

Also instructive to our analysis is *Ware v. State*, 170 Md. App. 1, *cert. denied*, 396 Md. 13 (2006), *cert. denied*, 549 U.S. 1342 (2007). There, Ware was convicted of two counts of first degree murder and related handgun violations. *Ware*, 170 Md. App. at 6-7. After he was arrested, Ware waived his *Miranda* rights and agreed to speak to the police. *Id*. at 9. During trial, the police detective that interviewed Ware testified as follows:

> [PROSECUTOR]: Now, when you began the interview, can you tell us what you first asked the Defendant?
>
> [DETECTIVE]: It was suggested to him that we could be compassionate and understand how this could occur. *From that, we didn't get a reply*. So it was at that point we asked the Defendant if he would recount his day for the last 24 hours.

Ware, 170 Md. App. at 9-10 (emphasis in original).

After further testimony, the detective testified that Ware admitted that he owned a ".380" handgun, one with "black grips with a silver frame." The following exchange ensued:

> [PROSECUTOR]: Did he tell you where that gun was?
>
> [DETECTIVE]: He told me that he kept [it] at his apartment. The apartment, being his, would be described [as] the one he was staying [in] over on Village Squares with Antonio Barnes.
>
> [PROSECUTOR]: And did he tell you that – *did he say anything about its whereabouts on December 30th*?
>
> [DETECTIVE]: *The gun*?
>
> [PROSECUTOR]: *Yes*.

[DETECTIVE]: *No.*

[PROSECUTOR]: Did you ask him where you could find the gun?

[DETECTIVE]: It was asked. *I didn't get a response*.

[PROSECUTOR]: Okay. What else did he tell you?

[DEFENSE COUNSEL]: Your Honor, can we approach for a minute?

[THE COURT]: Yes.

Ware, 170 Md. App. at 10 (emphasis in original).

During the ensuing bench conference, defense counsel argued that the detective should not be permitted to testify that Ware declined to answer certain questions. *Ware*, 170 Md. App. at 11. After clarifying that counsel contended that Ware invoked his right to silence, the court declined to take further action, stating " I will leave the answer stand." *Id*. at 12. During closing argument, the prosecutor asked the jury to consider Ware's failure to answer when he was asked to tell the police where his gun was located. *Id*.

On appeal, the issue concerned whether the court erred in admitting evidence of Ware's post-arrest, post-*Miranda* silence. *Ware*, 170 Md. App. at 16. This Court first concluded that Ware waived any complaint regarding the detective's testimony that the police could be "compassionate" and understanding because there was no objection when the officer testified Ware did not reply to this query. *Id*. at 20.

However, with respect to the detective's testimony concerning the location of the gun, we came to a different conclusion and held that the issue was preserved. *Ware*, 170 Md.

App. at 21. We observed that counsel asked to approach the bench "almost immediately" after the testimony. Furthermore, defense counsel raised the same grounds at the bench that were being raised on appeal. *Id*. Because the objection was raised "as soon thereafter as the grounds for objection become apparent," this Court addressed the issue on the merits. *Id*.

In considering whether it was error to admit evidence of Ware's refusal to provide the location of the gun, this Court relied on *Younie v. State*, 272 Md. 233 (1974). In *Younie*, during a custodial interrogation Younie waived his right to remain silent and agreed to answer some, but not all, questions about the underlying crimes. *Younie*, 272 Md. at 236-38. At trial, and over objection, the jury learned that Younie answered only fifteen out of twenty-three questions. *Id*. Thereafter, the State referred to Younie's refusals to respond to all of the questions during closing argument. *Id*. at 238. On appeal, Younie maintained that "his silence was a permissible exercise of his privilege against self-incrimination and, since the only purpose the objected to evidence served was to create the highly prejudicial inference that his failure to respond was motivated by guilt, its inclusion was reversible error." *Id*. The Court of Appeals agreed, explaining that "Silence in the context of a custodial inquisition is presumed to be an exercise of the privilege against self-incrimination from which no legal penalty can flow, and the State has the heavy burden of demonstrating by clear and convincing evidence that a failure to respond was not an invocation of this right." *Id*. at 244.

Guided by *Younie* and related cases, this Court in *Ware* concluded that testimony concerning Ware's non-response to a question concerning the location of the gun was admitted in error, noting that "non-responses during custodial interrogation are clearly and precisely what the courts of the United States and Maryland consistently protect." 170 Md. App. at 28. However, we also concluded that the error was harmless beyond a reasonable doubt. *Id*. at 29-31. This was not only due to the strong evidence of Ware's guilt, but also to the fact that there was cumulative evidence that Ware owned a gun and that gun was never found. *Id*. This Court noted "[h]ad the court barred admission of appellant's silence as to the location of the gun, that would not have made the gun's absence any less conspicuous." *Id*. at 30. Accordingly, despite the error, we affirmed Ware's convictions. *Ware*, 170 Md. App. at 35.

In this case, appellant indicated that he did not want to answer certain questions three different times. The record is not entirely clear what prompted appellant's first refusal because the transcript merely indicates that the testimony was inaudible. However, notably, the inaudible portions occurred after the officer asked appellant "[w]hat's the deal with the marijuana and the cocaine (inaudible) the car today?"

Most likely continuing with this theme about the contraband found inside the vehicle, the second refusal came after the officer asked appellant if the narcotics belonged to him or Ms. Ewell. Defense counsel objected, but only after the appellant again testified that he was refusing to answer the question.

Appellant's third refusal to answer happened after a short bench conference concluded, wherein the court acknowledged that appellant had selectively invoked the right to silence. But, the testimony came in, without further objection, only after the police officer: (1) informed appellant that Ms. Ewell was going to be charged in relation to the narcotics seized from the vehicle; and, (2) asked him if Ewell knew about the drugs.

We are persuaded that the appellant did not properly preserve this question. Prior to his first selective invocation, it was apparent that the police officer was going to question him about ownership of the drugs found in the vehicle. Defense counsel arguably could have anticipated this line of questioning. Even to the extent that the appellant's answers were unexpected, defense counsel failed to object whatsoever after the first refusal, and did not timely object after the officer asked appellant whether the narcotics belonged to him or his female companion. In any event, the issue was clearly waived when there was no objection prior to appellant's third refusal to answer, after the bench conference clearly delineated the issue now being raised on appeal. The issue was not preserved.

Moreover, even if preserved, we conclude that any error was harmless beyond a reasonable doubt. *See Morris v. State*, 418 Md. 194, 221-22 (2011) (Harmless error analysis requires that the appellate court "be satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976) (footnote omitted)); *accord Frobouck v. State*, 212 Md. App. 262, 284, *cert. denied*, 434

Md. 313 (2013). Appellant was the front seat passenger inside a vehicle where cocaine was found inside the center console. Additionally, a large quantity of cash was found in a size 46 jacket on the rear seat, and marijuana was found packaged in the trunk. Although there was no evidence that the jacket belonged to appellant, a reasonable inference can be reached that the jacket belonged to appellant, as opposed to Ewell, who was approximately 5'5" tall, weighed between 115-130 pounds, and who was described as a "small statured female." Additionally, there was no drug paraphernalia recovered, and an expert opined that the drugs were for purposes of distribution.

These facts support a conclusion that appellant was just as liable for the drugs recovered in the vehicle as Ewell. *See*, *e.g.*, *Maryland v. Pringle*, 540 U.S. 366, 372 (2003) ("We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine"). There is also no argument that the State improperly commented on appellant's refusal to answer the officer's questions in its closing argument. Moreover, to paraphrase the State's argument in its appellate brief, assuming that the jury drew any inference from appellant's refusal to answer, it is possible that the jury inferred "that the contraband did, in fact, belong to his companion, and Campbell – given the opportunity to defend himself by placing the

blame upon another – declined to do so, to protect that person." Under these facts and circumstances, we conclude that any error was harmless beyond a reasonable doubt.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.