

Circuit Court for Baltimore County
Case No. C-03-CR-21-002957

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 250

September Term, 2023

ANTHONY EDWIN WING

v.

STATE OF MARYLAND

Berger,
Reed,
McDonald, Robert N.
(Senior Judge,
Specially Assigned),
JJ.

Opinion by McDonald, J.

Filed: October 30, 2024

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

On October 26, 2022, Appellant Anthony Edwin Wing was convicted in the Circuit Court for Baltimore County of illegally possessing a regulated firearm after having been convicted of a disqualifying crime, in violation of Maryland Code, Public Safety Article (“PS”), §5-133(c).

In his appeal of that conviction, Mr. Wing raises two issues. As a threshold matter, he asserts that he was not brought to trial by the deadline set by a law known as the “*Hicks* rule” and that the Circuit Court erred when it denied his motion to dismiss the charge on that ground. Second, he argues that the evidence at trial was insufficient to establish that he possessed the firearm in question.

As explained in detail below, neither contention has merit. Accordingly, we affirm Mr. Wing’s conviction.

I

Whether There Was a Violation of the *Hicks* Rule

A. *The Hicks Rule*

The timetable for commencing criminal trial is set forth in identical terms in the Maryland Code and Maryland Rules and is commonly known as the “*Hicks* rule” – a nickname derived from a key decision of the Court of Appeals, now called the Supreme Court, interpreting those provisions.¹ Under the *Hicks* rule, a criminal trial in a circuit

¹ *State v. Hicks*, 285 Md. 310, *on motion for reconsideration*, 285 Md. 334 (1979). Since that decision, both the statute and rule have been amended and a substantial body of case law has construed the *Hicks* rule. *Jackson v. State*, 485 Md. 1, 17-18 (2023); *Tunnell v. State*, 466 Md. 565, 585-89 (2020).

court must begin within 180 days of the date that either the defendant or the defense counsel first appears in that court, whichever happens first. CP §6-103(a); Maryland Rule 4-271(a). Ordinarily, that deadline (the “*Hicks* date”) is mandatory; if a circuit court does not bring the defendant to trial by then, it must dismiss the criminal charges with prejudice. *See State v. Hicks*, 285 Md. 310, 318, *on motion for reconsideration*, 285 Md. 334 (1979); *Tunnell v. State*, 466 Md. 565, 571 (2020). Nonetheless, the county administrative judge or the administrative judge’s designee may postpone the trial date “for good cause shown.” CP §6-103(b); Rule 4-271(a). The circumstances that have been found to constitute “good cause” have included, among other things, the unavailability of a judge, prosecutor, or courtroom or general court congestion in a particular jurisdiction. *Tunnell*, 466 Md. at 587(citing cases); *see also State v. Frazier*, 298 Md. 422, 457 (1984) (noting that “even if there were no deficiencies in the number of judges, prosecutors, public defenders, etc., overcrowded docket situations are sometimes inescapable”).²

The purpose of the *Hicks* rule is to “obtain prompt disposition of criminal charges” and thereby avoid the inefficiencies and loss of public confidence in the court system caused by frequent postponements. *Hicks*, 285 Md. at 316-17; *see also Tunnell*, 466 Md. at 585.³

² The Court has also recognized that a defendant may consent to a trial past the *Hicks* date. *Tunnell*, 466 Md. at 586.

³ The *Hicks* rule is distinct from the State and federal constitutional rights to a speedy trial; compliance with the *Hicks* rule would also presumably satisfy the constitutional constraint. *Tunnell*, 466 Md. at 572. No separate issue under the constitutional provisions is raised in this case.

B. *The Hicks Date, the Pandemic, the Continuances, and the Ultimate Trial Date*

1. The Hicks Date as Initially Calculated

Defense counsel entered an appearance in this case in the Circuit Court on September 16, 2021. Because Mr. Wing himself had not yet appeared before the Circuit Court in connection with this case, the *Hicks* date would be 180 days from that date – *i.e.*, March 15, 2022. A week after counsel entered his appearance, the Circuit Court set a trial date of February 28, 2022 – two weeks before the *Hicks* date.

2. Adjustment of the Hicks Date Due to the Pandemic

In the interim, however, a new variant of the Covid-19 coronavirus was spreading throughout Maryland. The Chief Judge of the Court of Appeals issued an emergency order, effective December 29, 2021, suspending jury trials through February 8, 2022.⁴ A subsequent administrative order continued the suspension of jury trials through March 6, 2022, thereby encompassing the scheduled date of Mr. Wing’s trial (February 28).⁵ Both orders incorporated the “terms and conditions” of a prior administrative order which provided that, for purposes of calculating a *Hicks* date, the period during which jury trials were suspended “do[es] not count against the time remaining for the start of a criminal jury trial.”⁶ Pertinent to Mr. Wing’s case, the order suspending jury trials through March 6,

⁴ Interim Administrative Order of December 27, 2021 Restricting Statewide Judiciary Operations in Light of the Omicron Variant of the COVID-19 Emergency, ¶¶(d)-(e).

⁵ Extension of Interim Administrative Order of December 27, 2021 Restricting Statewide Judiciary Operations in Light of the Omicron Variant of the COVID-19 Emergency (January 14, 2022) (“January 14 Extension Order”), ¶¶(d)-(f).

2022 also provided for an “an additional tolling of thirty days from the time that jury trials resume on March 7, 2022 to allow Circuit Courts to conduct status hearings and reschedule jury trials as appropriate.”⁷

As a result of these orders, 68 of the days originally used to compute the *Hicks* date in Mr. Wing’s case no longer “counted” for that purpose. Effectively, the *Hicks* date was extended from March 15 to May 29, 2022, not counting the additional 30 days of tolling provided by the administrative orders for the period after jury trials resumed. The Circuit Court computed the adjusted *Hicks* date in Mr. Wing’s case to be June 20, 2022.⁸

3. Continuance Past the *Hicks* Date

On February 28, 2022 – the original trial date for Mr. Wing’s case – jury trials remained suspended. At a conference before the administrative judge⁹ that day, the prosecutor told the court that the parties would not be able to otherwise resolve the case that day without a trial. A plea offer had been made to Mr. Wing, who had declined the

⁶ Fourth Amended Administrative Order on Lifting the Statewide Suspension of Jury Trials and Maintaining Grand Juries (August 6, 2021), ¶(h).

⁷ January 14 Extension Order, ¶(f).

⁸ Although the basis of that determination is not clear from the record, it may be that, because the original *Hicks* date (March 15) was after the date that jury trials resumed, the court included part of the additional 30 days for tolling after trials resumed.

⁹ As noted above, a postponement of a trial date beyond the *Hicks* date may be permissible in some circumstances when the county administrative judge or that judge’s designee grants the postponement. In Mr. Wing’s case, both the county administrative judge and that judge’s designee issued orders re-scheduling Mr. Wing’s trial. There is no issue in this appeal as to whether those decisions were made by an appropriate decisionmaker. For ease of reference, we will refer to both judges simply as “the administrative judge” in discussing the orders re-scheduling the trial date.

offer. Counsel presented what was characterized as a “defense request” for a postponement of the trial, apparently on the basis that the defense had not yet received surveillance camera video from the State, and indicated that they had agreed upon a new trial date of July 13, 2022. Noting that the date was “slightly outside of *Hicks*,” the prosecutor asked the administrative judge to find good cause for the postponement. Mr. Wing stated that he was unwilling to waive his right to be tried by the *Hicks* date.

The administrative judge found good cause to grant the continuance, noting that it “would just be a matter of a few weeks” past the *Hicks* date. Elaborating on that finding, the administrative judge cited the court’s inability to schedule any jury trials before March 7, the need to give first priority to cases that had already been postponed, and the court’s limited facilities for socially-distant jury selections and trials.

A criminal trial postponement form was completed and signed by the administrative judge. That form indicated that there was good cause for the postponement. Under a section of the form entitled “Reason for the Postponement”, a box for “No Judge/Jury Available” was checked. In addition, a box labeled “Other” was also checked with a handwritten notation: “Not willing to accept offer.”

4. Motion to Dismiss

Two months later, on May 2, 2022, Mr. Wing filed a *pro se* motion to suppress evidence and dismiss the charges on several grounds, including an alleged violation of his speedy trial rights.¹⁰

5. Further Postponements

On June 6, 2022, another hearing was held before the administrative judge. The prosecutor informed the court that he would be out of the state on the July 13 trial date and asked for a trial date in late August. He briefly discussed a pending plea offer to Mr. Wing, which Mr. Wing had declined. Mr. Wing also reiterated that he would not consent to a postponement past the *Hicks* date. The administrative judge found that there was good cause for a postponement, noting that the prosecutor had been out of the office with Covid. Stating that the request would have been granted for either party, the administrative judge said that the court would “get this case in the earliest conceivable date when both attorneys are available,” but that the date was subject to the remote-site jury selection then in effect and to the fact that the courthouse only had four courtrooms available for socially-distanced 12-person juries. The administrative judge further found that there was “no inordinate delay in setting the trial” as the case was still likely to go to trial during the summer of 2022. The new trial date was September 6, 2022.

¹⁰ That motion also argued that the case should be dismissed on the grounds that Mr. Wing’s arrest was unlawful, that there had been an unlawful search and seizure, and that his *Miranda* rights had been violated. None of those grounds are at issue in this appeal.

On September 6, 2022, the parties appeared for trial. Instead, the administrative judge conducted a hearing in the case. According to the administrative judge, due to illnesses and a judicial vacancy, no judges were available to preside over a trial that day. As a result, the administrative judge found good cause to postpone the trial “with great reluctance.” The court set a new trial date of October 26, 2022. The court noted that Mr. Wing had asserted his speedy trial rights throughout the proceedings and had filed a *pro se* motion to suppress evidence and to dismiss the charges. The court heard argument from Mr. Wing on his motion and took it under advisement.

The administrative judge followed up with a written ruling dated September 14, 2022. In that ruling, the administrative judge denied Mr. Wing’s motion to suppress evidence and dismiss the charges and briefly explained why each of the five bases stated in that motion lacked merit. With respect to whether there was a violation of the *Hicks* rule that required dismissal, the court stated that there was good cause found for the postponement granted on June 6, 2022, due to the unavailability of the prosecutor. Apparently referencing one of the boxes checked on the earlier criminal trial postponement form, the court stated that Mr. Wing was also “responsible for a postponement on February 28, 2022, due to rejecting a plea offer from the State.”

6. Trial

Mr. Wing’s trial began, as re-scheduled, on October 26, 2022.

C. Discussion

Mr. Wing asserts that the Circuit Court abused its discretion in postponing his trial past the *Hicks* date because it lacked good cause for doing so in either of the decisions that

continued the trial past the *Hicks* date – either the initial postponement on February 28, 2022, past the original *Hicks* date or the later postponement on June 6, 2022 past the adjusted *Hicks* date.

1. Framework for Appellate Review of Alleged Violation of *Hicks* Rule

Appellate review of a defendant’s contention that a postponement of a trial date violated the *Hicks* rule and thereby required dismissal of the charges entails two inquiries. *Tunnell*, 466 Md. at 589. The first inquiry is whether the administrative judge had “good cause” to grant a postponement of the scheduled trial date. An administrative judge’s determination of good cause is subject to review for “abuse of discretion or a lack of good cause as a matter of law,” *id.*, and is “rarely subject to reversal upon review.” *Id.*, quoting *Frazier*, 298 Md. at 451.

The second inquiry is whether there was “an inordinate delay” between the scheduled trial date and the new trial date. *Tunnell*, 466 Md. at 589. That issue is also reviewed under an abuse of discretion standard. *Id.*; *Frazier*, 298 Md. at 461-62. The defendant has the burden of making a *prima facie* showing that the delay was excessive under the circumstances. If the defendant does so, the burden then shifts to the State to justify that delay. *Tunnell*, 466 Md. at 589-90.

2. Whether there Was Good Cause to Postpone the Scheduled Trial Date

The initial task is to identify the “critical date,” defined as the date on which the court first postponed the defendant’s trial to a date past the *Hicks* date. *Tunnell*, 466 Md. at 589. In Mr. Wing’s case, that postponement occurred on February 28, 2022, when the

court postponed Mr. Wing’s trial, which had originally been scheduled within the *Hicks* deadline, to July 13, 2022 – a date that fell after the revised deadline of June 20, 2022.

The question thus is whether the court abused its discretion on February 28, 2022, when it found good cause for postponing Mr. Wing’s trial to a date past the adjusted *Hicks* date. Even in ordinary times, “overcrowded docket situations are sometimes inescapable.” *Frazier*, 298 Md. at 457. Mr. Wing’s case fell within a pandemic year. As of February 28, 2022, jury trials had already been suspended for two months and would continue to be suspended until March 7, obviously resulting in a backlog. In all, that suspension lasted 68 days. The administrative judge did not abuse his discretion in determining that the Circuit Court would have to give priority to other cases on the docket and that the need to do so constituted good cause for postponing Mr. Wing’s trial past the *Hicks* date.

Citing the court’s February 28, 2022 criminal postponement form and September 14, 2022 ruling denying his speedy trial motion, Mr. Wing posits that the administrative judge based the critical postponement on Mr. Wing’s choice to reject a plea offer. From that premise, Mr. Wing then argues that his election to go to trial should not have played any role in a continuance past the *Hicks* date. However, the transcript of the February 28, 2022 hearing shows that the court first granted a postponement generally – the case could not be tried that day, as jury trials had been suspended, and there was no plea to enter – and then “also” found good cause for postponing the trial past the *Hicks* date. The reasons that the court cited as good cause for its ruling pertained to the court’s reduced ability to operate under pandemic conditions, not to Mr. Wing’s election to be tried by a jury.

3. Whether the Ultimate Trial Date Involved Inordinate Delay

When a court has had good cause to postpone a case beyond the *Hicks* date, the next question is whether there was an inordinate delay in trying the defendant – that is, whether “the change of trial date, or the period of time until a new trial date, represented a clear abuse of discretion.” *Frazier*, 298 Md. at 462. Whether the delay from postponement to trial is inordinate focuses on whether the trial court, having postponed the trial past the *Hicks* date for good cause, then proceeded to try it without undue delay. *Id.* That question is separate from whether the postponement was for good cause. *State v. Cook*, 322 Md. 93, 99 (1991), citing *Rosenbach v. State*, 314 Md. 473, 481 (1989).

After Mr. Wing’s case was initially postponed to July 13, 2022, it was postponed two more times: on June 6, when the prosecutor stated that he would not be available on July 13, and on September 6, when no judges were available to preside over the trial. On June 6, the administrative judge, told that the case would take two and a half days at the most, stated his belief that the case could likely be scheduled in August. Based on that belief, the court found “no inordinate delay in setting this case for trial, within the timeframe that we’re discussing, which is still the summer of 2022.” Although the court’s estimation of the availability of an August date turned out to be optimistic – September 6 was the next available date – Mr. Wing has not demonstrated that the court’s June 6 ruling was an abuse of discretion. Mr. Wing has neither argued nor demonstrated that the subsequent delay of the trial past the September date was inordinate.

In some cases, an appropriate approach to the “inordinate delay” question is to look at the length of time that elapsed between the *Hicks* date and the final trial date. *See*

Tunnell, 466 Md. 591-92 (noting that, under the circumstances of that case, “[a] more relevant point of comparison ... would measure the new trial date that was later selected against the *Hicks* date.”). Mr. Wing’s case was tried 128 days past the adjusted *Hicks* date of June 20 – somewhat longer than the periods found not to be inordinate in past cases.¹¹ However, “inordinate” means “inordinate under the circumstances,” keeping in mind the purpose of the *Hicks* rule to ensure that defendants are tried expeditiously. *See, e.g., Cook*, 322 Md. at 109. Here, the delay occurred in the context of a worldwide pandemic. While the adjustment of the *Hicks* date took into account the period during which *no jury trials at all* were conducted, even after jury trials were resumed the Circuit Court faced significant constraints (acknowledged by the administrative judge) in the limited number of courtrooms that would accommodate a socially distanced jury, the reduced availability of judges, and the need to conduct jury selection off site. Given the disruption caused by the pandemic, the delay, although perhaps long enough under normal circumstances to shift the burden to the State, *see Frazier*, 298 Md. at 462, was not inordinate in Mr. Wing’s case. The Circuit Court did not abuse its discretion in re-scheduling his trial.

In sum, Mr. Wing has not established a violation of the *Hicks* rule.

¹¹ *See, e.g., State v. Beard*, 299 Md. 472, 477 (113 days past the *Hicks* date); *see also Tunnell*, 466 Md. at 592 (giving examples of cases in which the delay either was not inordinate or did not shift the burden to the State to justify that delay).

II

Whether the Evidence was Sufficient to Support the Conviction

Mr. Wing was convicted of one count of illegally possessing a regulated firearm in violation of PS §5-133(c). That statute makes it a crime for an individual who has previously been convicted of certain crimes to possess a regulated firearm.

A. The Evidence at Trial

At trial, the prosecution and defense stipulated that Mr. Wing had a previous criminal conviction that made him a disqualified person for purposes of PS §5-133(c). The parties also stipulated that the firearm in question came within the definition of “regulated firearm.”¹² Thus, the only contested issue was whether Mr. Wing had possessed the firearm.

The evidence of Mr. Wing’s possession of the firearm related to certain events that occurred in the backyard and back alley behind a house in Dundalk in Baltimore County on July 16, 2021. The owner of that house, who operated a marine safety business out of the house, testified and screen shots from a security camera he had installed were introduced into evidence. An employee of the business who was present at the business on that date and who encountered Mr. Wing, also testified. A police officer who reported to the scene and retrieved the gun in question from a trash can also testified; the gun, as well as a recording from the officer’s body camera, were introduced into evidence. The defense did not present any evidence.

¹² As defined by statute, the term “regulated firearm” encompasses handguns and certain assault weapons. PS §5-101(r).

The employee of the marine safety business testified that, on July 16, 2021, he drove his work van down the alley and parked behind the business. As he got out of the van, he saw an individual whom he identified in court as Mr. Wing sitting on one of the buckets that the business had there. Mr. Wing began “yelling like ‘the wife’s cheating on me.’” The employee initially tried to engage Mr. Wing in a friendly conversation, but then saw a handgun in Mr. Wing’s pocket. The employee then went into the garage of the business. He had earlier noticed police cars driving around the neighborhood and called the police precinct to ask whether they were looking for someone. He next called the owner of the house and business, who was out-of-state that day.

The owner testified that he had installed four security cameras around the house and had set the system up so that he could have remote access to the camera feeds from a mobile telephone or computer. Upon receiving the call from his employee that day, he immediately accessed the surveillance system and told his employee that he did not know the man sitting in the alley.

The owner testified that he was later contacted by the police after they had arrested Mr. Wing. The police said that they were looking for the gun and asked if he could determine its location from the surveillance recording. The owner reviewed the video and saw the man later identified as Mr. Wing pull on the back door to the house and, after it did not open, pull a gun from his pocket, and put it in a blue trash can. He next saw the man turn around, talk to someone, and then walk outside the range of the camera. The owner sent a copy of the recording to the police.

The prosecution introduced several still photos derived from the video recordings. The owner identified them as showing, among other things, his back yard, the blue trash can, and the man identified as Mr. Wing moving around the porch and tossing the gun into the trash can.

The police officer who retrieved the gun testified that the police had initially been contacted about “an individual that appeared to be intoxicated ... walking around with a handgun” at two addresses on a street near the owner’s house. As the officer turned his car to go into the alley, he could then see a man – whom he identified in court as Mr. Wing – standing on the back deck of the owner’s house. Mr. Wing was detained and frisked, but no gun was detected. The officer testified that a search for the gun was conducted with the assistance of the owner who was remotely reviewing the surveillance video. The gun was eventually recovered from the blue trash can on the back deck of the business owner’s house.

A recording from the officer’s body camera was played for the jury and still photos from that recording were introduced into evidence. The recording showed the officer’s search of the yard, his view of a gun partially visible under some trash in the can, and his removal of the gun from the can. The gun was also admitted into evidence.

At the end of the State’s case, the defense moved for dismissal of the charge on the ground that there was insufficient evidence to prove beyond a reasonable doubt that Mr. Wing had possessed the firearm. It renewed that motion at the close of all evidence after Mr. Wing had elected not to testify and called no witnesses. The court denied both motions.

After deliberating for 20 minutes on the single count before it,¹³ the jury found Mr. Wing guilty of violating PS §5-133(c).

B. Discussion

To address the sufficiency of evidence to support a jury’s guilty verdict, a court looks to whether the evidence, viewed in the light most favorable to the prosecution as the prevailing party, would support a finding of the essential elements of the crime beyond a reasonable doubt. *Sequeira v. State*, 250 Md. App. 161, 203 (2021). The court does not distinguish between circumstantial and direct evidence. *Burlas v. State*, 185 Md. App. 559, 569 (2009); *see also State v. Smith*, 374 Md. 527, 533-34 (2004) (“[G]enerally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.”) (citation and internal quotation marks omitted). The court is also to take into account that it is the jury’s role to assess the credibility of witnesses and to resolve conflicting inferences from the evidence.

To prove the element of “possession” for purposes of a statute that prohibits the possession of a prohibited item, the prosecution must demonstrate, whether “directly or inferentially,” that the defendant “exercised some dominion or control” over the prohibited item. *Parker v. State*, 402 Md. 372, 407 (2007). While possession may be either actual or constructive, mere presence near a prohibited item does not by itself establish possession. *Id.* (“A possession conviction normally requires knowledge of the illicit item.”).

¹³ The State nol prossed the other nine counts of the indictment.

Citing *Parker*, Mr. Wing argues that his “mere presence” on the back deck next to the blue trash can was insufficient to support the jury’s conclusion that he possessed the firearm. The prosecution’s other evidence, he argues, might support a “strong suspicion” or “mere probability” that he possessed the firearm, but not a finding beyond a reasonable doubt that he did so. Mr. Wing notes that no weapon was found on him, that neither DNA nor fingerprint evidence was introduced, and that the jury viewed only the still photos that appeared to depict him dropping the gun into the trash can rather than the full surveillance video.

In our view, the jury received more than sufficient evidence upon which a rational trier of fact could find beyond a reasonable doubt that Mr. Wing possessed the handgun introduced into evidence at trial while he was in the Dundalk alley on July 21, 2019. The business employee who encountered Mr. Wing in the alley (and identified him at trial) testified to observing a gun in Mr. Wing’s pocket. Exhibits introduced into evidence – still photos from the surveillance video taken shortly after that encounter – depict Mr. Wing holding a gun in one hand while leaning down to open the lid of a trash can with the other and then reaching down into the can. The police officer testified to retrieving the gun introduced at trial from that trash can, an event that was documented on the body camera recording played for the jury.

III

Conclusion

For the reasons explained above, we hold:

(1) The Circuit Court did not abuse its discretion when it postponed the trial of Mr. Wing’s case past the deadline set by the *Hicks* rule. In light of the conditions under which the Circuit Court was operating in the months during and after the suspension of jury trials caused by the Covid-19 pandemic, the court had good cause to postpone Mr. Wing’s trial past the *Hicks* date and the length of that postponement was not inordinate.

(2) The evidence at trial was sufficient to support a finding by a rational factfinder beyond a reasonable doubt that Mr. Wing had possessed the firearm in question.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**