UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 318

September Term, 2014

CHARLES B. McNEAL

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 7, 2015

A jury sitting in the Circuit Court for Washington County convicted Charles B. McNeal, the appellant, of robbery, conspiracy to commit robbery, theft under $10,000, conspiracy to commit theft under $10,000, second degree assault, and fourth degree burglary. The court sentenced the appellant to a term of 14 years' incarceration for robbery; a consecutive two-year term for conspiracy to commit robbery; a consecutive two-year term for second degree assault; and a consecutive four-year term, two years suspended, for fourth degree burglary. The convictions for theft and conspiracy to commit theft merged for purposes of sentencing.

The appellant appeals, presenting two questions, which we have rephrased slightly:

I. Did the trial court err by permitting the appellant to appear before the jury on the first day of trial dressed in prison attire?

II. Did the trial court err by denying the appellant's motion to suppress evidence stored in digital format that he listened to and viewed nine days before trial or, in the alternative, did the court err by not granting the appellant a continuance?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

On September 14, 2012, the M&T Bank on Pennsylvania Avenue in Hagerstown was robbed. Three people were charged with crimes in connection with the robbery: the appellant, Rolando Lacy, and Kerri High. The charges against the appellant were tried to a jury over five days.[1] The following evidence was adduced.

[1]As we shall discuss, the appellant discharged his counsel and represented himself at the trial.

On the day of the robbery, Marilyn Miller and Sabrina Rohrer were working as tellers at the M&T Bank. Miller was assigned to a teller station. Rohrer was at the drive-through window. A little after 4:30 p.m., a man wearing dark black sunglasses, a red baseball hat, and a long-sleeved button-down shirt walked up to Miller's teller station. Rohrer had turned around to welcome the man to the bank. She walked over and stood next to Miller. The man handed Miller a note that read: "Put $10,000.00 in an envelope. If you do this, no one will be hurt. . . . No marked money, no bait money." Miller placed the note on her computer keyboard and walked away to retrieve an envelope. Meanwhile, the man reached over the teller window and took back the note.

Miller put all of the money from her teller drawer, including bait money, into the envelope and handed it to the man. It totaled $1,872. The man walked out of the bank. Rohrer yelled, "H.E. Peterson," which was a code established by the bank manager to alert the other staff that there had been a robbery. She then ran after the man, but could not see which way he had gone.

Police arrived, took statements from Miller and Rohrer, and retrieved surveillance footage from the bank. The surveillance footage was admitted into evidence at trial.

Meanwhile, in the Fountainhead neighborhood, a residential subdivision located directly behind the M&T bank, Lawrence Popp was arriving home. He saw his wife standing on the back patio talking to a man wearing sunglasses, a baseball cap, and a long-sleeved shirt. The man told Mr. and Mrs. Popp that his ride had not shown up and offered Mrs. Popp

$20 for a ride to Maugansville, a nearby town. Mr. Popp suggested that the man call a taxi. The man left on foot, walking in the direction of the house next door.

Around 4:45 p.m., another resident of the Fountainhead neighborhood, James Muto, was working in his dining room when he heard the door from the garage to the kitchen open and his wife exclaim, "Why are you in my house?" Mr. Muto walked into the kitchen and saw a man standing in the kitchen about a foot away from his wife. The man was not wearing a shirt and was sweating profusely. The man said he had been running and needed a place to rest. Mrs. Muto gave the man a glass of water and Mr. Muto offered to call someone for him. Instead, the man pulled out an older style flip phone and asked if he could charge it. Mr. Muto told the man that he did not have the right kind of charger for that phone and asked the man to leave. After the man left, Mr. Muto called 911.

The police responded to the Motos' house and used a canine unit to track the man's scent. While they were doing so, Mr. Muto saw his neighbor, Judge Kenneth Long, outside. He asked Judge Long if he had seen anyone in the area. Judge Long went inside his house to look for his wife and saw his wife talking to a man on the back porch. Judge Long ran back outside and told the police. The appellant was the man on Judge Long's back porch. He was arrested. Mr. Muto identified the appellant as the same man who had walked into his house. The police confiscated the appellant's cell phone at that time.

The police drove the appellant back to the M&T Bank, and had asked him to step out of the car. They brought Miller and Rohrer outside. Rohrer identified the appellant as the

robber. Miller was unable to say for sure whether the appellant was the man who had robbed the bank. At trial, both Miller and Rohrer identified the appellant as the robber.

That day and the following Monday, the police canvassed the Fountainhead neighborhood for evidence. They recovered a pair of black sunglasses and a red baseball cap hidden under a shrub at the house next door to the Popps' house. They recovered a balled up long-sleeve shirt in a trash can outside of a home between the Popps' house and the Mutos' house. Finally, that same night, John Liebl, who lived across the street from the house where the shirt was found, discovered an M&T Bank envelope in his roadside mailbox with $1,874 in cash inside.[2] The cash included all of the bait money from Miller's teller drawer. Fingerprints on the envelope matched those of the appellant.

Detective Jared Barnhart with the Washington County Sheriff's Office ("WCSO") executed a search warrant for the appellant's cell phone. He found a contact on the phone labeled "Carrie at the Park in Md," associated with a phone number registered to High, then age 17. He also found a contact labeled "Rolando's Cell," associated with a phone number registered to Lacy. On the day of the robbery, the appellant had sent a text message to High at 4:39 p.m. It read: "Look for me in about 90 seconds or so. Tell ro to have his phone out and ready incase I need to call. 1 2 3 GO!"

[2]Liebl did not report this discovery to the police initially. On Monday, September 17, 2014, police returned to the Fountainhead neighborhood to search for the money. They spoke to Liebl and he gave them the envelope of cash.

The sunglasses, hat, and shirt found by police were tested for DNA and compared against known samples for the appellant and Lacy. The appellant's DNA was found on the sunglasses. A mixture of DNA was found on the shirt. The appellant's DNA was the major contributor to the mixture. A mixture of three or more individuals' DNA was found on the hat. The appellant and Lacy could not be excluded as contributors to this mixture.

As mentioned, Lacy and High also were charged in connection with the robbery. Lacy was not called as a witness because he invoked his Fifth Amendment right against self-incrimination. High was charged as a juvenile and, in exchange for testifying against the appellant, the State agreed not to remove her case to the circuit court. High testified that she had first met the appellant and Lacy at a park in Williamsport, a town southwest of Hagerstown.[3] The appellant told High that his car had broken down and asked her if he could borrow her phone.

After meeting in the park, High and the appellant kept in touch by texting. On the day of the robbery, in the early afternoon, High was at her sister's house in State Line, Pennsylvania. The appellant texted her to see if she wanted to hang out. The appellant and Lacy came and picked her up. Lacy was driving a Green Chevy Blazer and the appellant was in the front passenger seat. Lacy drove them around for a while and they eventually parked in a lot on Pennsylvania Avenue in Hagerstown, near the M&T Bank. At that time, the appellant mentioned that he needed money and was "about to rob this bank." High did

[3]High did not testify *when* she first met the appellant.

not think the appellant was serious. The appellant found a piece of paper in the car and began writing "how he was gonna [rob the bank]," "kind of like planning it out." He then wrote a note that said, "This is a robbery. [D]on't make any sudden moves. Keep your hands above the counter and press the silence [sic] alarm when I leave." The appellant changed into a long-sleeve purple shirt, jeans, sneakers, a red hat, and a pair of sunglasses. He directed Lacy to drop him off in the Fountainhead neighborhood and to park on a certain road behind the bank to wait for him. The appellant said if he "got away with it," the three of them would split the money. The appellant took the note with him.

A short time passed and High received a text message from the appellant that said something like, "Come on, hurry up, get here" or "One, two, three, go." Lacy drove past the M&T Bank, but there were police cars outside so he did not stop. Instead, Lacy drove High back to her sister's house in State Line.

On October 1, 2012, while the appellant was incarcerated at the Washington County Detention Center ("WCDC") awaiting trial, he called High using another inmate's account. An audio recording of that telephone call was played for the jury. High identified the voices on the phone call as belonging to her and the appellant. In the recording, the appellant told High that he was going to move to suppress the statement she had made to the police implicating him (and Lacy) in the robbery. He told her she should come to the suppression hearing and testify that everything she had said previously "was a lie." If she did that, the "[w]orst case scenario" would be that she would be charged with a "felony for lying" and,

even then, she'd get "f[‘ing] probation or something." He asked her to "sacrifice that for [him] so [he] [didn't] have to go away for thirty or forty years." He reminded her that she "should've kept [her] mouth shut anyway" and that if she and Lacy had "been parked where the f[] [he] told [them] to be, [he] would have never even got arrested."

High disputed that she and Lacy were not where the appellant told them to be. The appellant responded,

> I told you . . . to be on the other side of the trees directly behind the bank. When I flew through them trees, there wasn't a soul there. And then I went to the next road and to the next road and to the next road, jumping fences, running through damn Fountain Head [sic] like an idiot. That's why I got booked. It took them fifteen minutes to catch me. And don't think I didn't see you guys drive by on 11 when I was standing there in cuffs. I seen you guys.

The appellant did not testify in his case. He called as a witness Sergeant William Nutter, a WCSD officer assigned to the WCDC. Sergeant Nutter testified about a misconduct report he had prepared concerning the appellant's use of another inmate's phone account to make phone calls from WCDC. Sergeant Nutter found that the appellant had made four phone calls from that inmate's account to his (the appellant's) mother. Sergeant Nutter's report did not reference any calls made by the appellant to High from another inmate's account. On cross-examination, Sergeant Nutter explained that he had not been provided with the number for High and, as such, had not investigated whether the appellant had used another inmate's account to make calls to that number.

The appellant also recalled a sheriff's deputy who responded to the M&T Bank immediately after the robbery and called a sheriff's deputy with the WCSD canine unit.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

The appellant contends the trial court erred by forcing him to stand trial wearing prison attire. The pertinent facts are as follows. As mentioned, the appellant represented himself at his trial. He had been incarcerated at the WCDC since his arrest. On the first day of trial, the appellant was transported from WCDC to the circuit court wearing his prison clothes, which were stamped "Washington County Detention Center."[4] Jury selection commenced and the appellant participated in the questioning of potential jurors.

After the jury was selected, but before the jurors were sworn, the appellant made two preliminary motions, a motion to suppress that we will discuss, *infra*, and a "Change of Venue Motion." In the latter motion, the appellant primarily was requesting a transfer from the WCDC to another detention facility. He alleged that he was being mistreated by staff at the WCDC, who were not permitting him to prepare for trial. As relevant here, he argued:

> I can't fight my case properly from behind these walls. My mother brought me a suit. I obviously do not have a suit on today. They [*i.e.*, WCDC staff] told her, "No." They told her even though it fit the requirements, it was too late. But, like, your Honor knows I thought I was gonna get a continuance a couple weeks before trial anyway, so having to come in two weeks before any court

[4]We cannot otherwise glean from the record the type of attire he was wearing.

> dates, obviously didn't know anything about that. Obviously, uh, I don't have any shoes on today. The jury has to watch me parade around in front of them with run-down holes in 'em strap-up Bob Barker shoes. Uh, I wasn't allowed to get dress shoes sent in. . . . . I just want to look presentable for a jury that's gonna judge me when I'm facing a hundred and three years with another case pending and eleven years back-up in another state. I'm facing life. I want to fight for that life. I want to be presentable when I fight for that life.
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> ***
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> The jail won't even allow me dress shoes, like I said, with a suit. . . . . So I'm being forced to represent myself in front of a jury up close and personal during a multi- multiple-day high-profile trial as it's became, uh, wearing what I'm wearing with [WCDC] stamped on the side of it. I think that's a little, uh, improper for the jury to see.
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> I'll pay for anything I need to pay for. I'll pay for, uh, any shoes, any suit.

The State responded that a change of venue was not warranted. It did not address the appellant's complaints about his prison attire.

The court denied the motion to transfer venue. With respect to the appellant's attire, the court opined:

> If . . . you have access or someone in your family has different clothes you want to wear, I can't change the fact of what you're wearing today, but if you can and wish to make arrangements to have other clothes brought to the detention facility and available for you to wear tomorrow or brought here so you can change to them, I so order. And I would expect complete cooperation with that. Now whether you can do it or not, sir, I don't know. And it's not for me to inquire. I'm simply saying that if you have a different wardrobe you're more comfortable in, that you find more presentable, I have every reason to believe, and I so direct, if you have those clothes available to you at least for tomorrow and any other days we are into this case, you'll have them available to you. I see no reason why you shouldn't and I don't think that –

> that won't be barred to you, but that's a function you need to take up if – if you can get those clothes, they'll be made available to you.

Thereafter, the jury was brought back into the courtroom, sworn, and the parties made opening statements. Two witnesses -- Miller and Rohrer -- were examined on the first day of trial. When the trial was adjourned for the day, the court spoke to the appellant about arrangements for clothing for the next day. The court permitted the appellant to speak to his girlfriend, who was in the courtroom, to arrange for her to pick up the clothing from the appellant's mother and deliver it to the courthouse the next morning by 8:45 a.m.

On the second day of trial, the trial judge remarked that he "observe[d]" that the appellant "did get other clothing." The appellant replied, "Yes." The appellant did not wear prison attire during the remainder of the trial.

The appellant contends the trial court "erred in refusing to allow [him] his non-prison attire on the first day of trial." According to the appellant, once he raised the issue of his prison attire, the trial court was obligated to determine whether the appellant's non-prison attire could be brought to the court that day and, if not, to see if the appellant desired a continuance. He asserts that the court's failure to so inquire amounted to deprivation of his right to a fair trial and requires the reversal of his convictions.

The State responds that the appellant waived this contention of error because he waited until after the jury was selected to bring his prison attire to the attention of the court. On the merits, the State maintains that the appellant was not "forced to wear his prison attire on the first day of trial" because he never requested a recess or a continuance to permit him

to obtain his street clothes. Finally, it maintains that any error was harmless beyond a reasonable doubt.

The United States Supreme Court has held that a defendant is deprived of the right to a fair trial if he or she is "compelled to go to trial in prison or jail clothing." *Estelle v. Williams*, 425 U.S. 501, 504 (1976). This is so because the "constant reminder of the accused's condition implicit in such distinctive, identifiable attire" may impair the presumption of innocence and is "repugnant to the concept of equal justice," because it disproportionately impacts low income defendants who cannot afford to post bail. *Id*. at 504-06. The *Estelle* Court emphasized, however, that a defendant may waive his right not to be tried in prison attire if he fails to object and to request relief.

In *Knott v. State*, 349 Md. 277 (1998), the Court of Appeals considered whether, under *Estelle*, a defendant's Fourteenth Amendment rights were violated when he was forced to stand trial dressed in an orange prison jumpsuit. On the first day of trial, defense counsel asked the court to grant a continuance because, among other reasons, Knott was dressed in prison attire. He explained that Knott's sister's car had broken down and, consequently, she had been unable to bring "civilian clothes" for him to wear. *Id*. at 283. The trial judge advised Knott that if he had had civilian clothes available, the court would have "ma[de] arrangements for [him] to wear them." *Id*. at 284. The court denied the request for a continuance, however, opining that it was unlikely that the jury would be affected by seeing Knott in prison attire because it would not be "any surprise to the jury to discover that

someone charged with offenses like this [reckless endangerment, assault and battery, and malicious destruction of property] would be in jail in lieu of bond. I don't think that is a big deal at all. It happens everyday." *Id*. The trial lasted two days,[5] and Knott was convicted of all charges.

On appeal, this Court, in an unreported opinion, held that the trial court erred by failing to undertake any effort to permit Knott to obtain his non-prison clothes, but that the issue was unpreserved because defense counsel did not object after the court denied the motion for continuance and that, in any event, the error was harmless beyond a reasonable doubt.

The Court of Appeals granted a petition for writ of *certiorari* and reversed. The Court explained that the "presumption of innocence . . . is not impermissibly impaired every time a defendant stands trial before a jury in prison attire." *Id*. at 287. First, a court must determine if the "element of compulsion" was present. *Id*. Second, the clothing must be identifiable as prison attire. Finally, if both elements were present, an appellate court must conduct a harmless error analysis.

The Court concluded that Knott had been compelled to be tried in prison attire because he had objected before the jury was empaneled. The Court also concluded that it was implicit in the trial court's ruling that the orange jumpsuit was "recogniz[able]" as "prison garb." *Id*. at 291. The Court observed that "[t]here may well have been no error if

[5]The record did not reflect whether Knott wore prison attire on the second day of trial.

the trial judge had inquired where Knott had other clothes available and how much time would be required to get those clothes to the courthouse." *Id*. at 286. Because the court failed to conduct a "fully developed inquiry," it was impossible to determine from the record whether Knott might have "waived his right to appear in non-prison garb, for example, by appearing in court in prison garb, as a tactic in an attempt to force a postponement." *Id*. The Court held that the error was not harmless beyond a reasonable doubt because the evidence against Knott turned on the credibility of the witnesses and he had testified in his case. For all of these reasons, the Court reversed Knott's convictions and remanded for a new trial.

We return to the case at bar. We agree with the appellant that he timely objected to being tried in his prison attire and that the record establishes that he was clothed in readily identifiable prison garb. Proceedings on the first day of trial commenced around 9:30 a.m. The appellant was brought into court wearing his prison attire after the venire was present in the courtroom. *Voir dire* commenced and lasted nearly 3 hours. During much of that period of time, the appellant was at the bench listening to the court question potential jurors.

After the jurors had been selected, but before they were sworn, the appellant raised the issue of his prison garb in the context of his motion to transfer venue. He said that he did not wish to be tried before the jury wearing clothing that was "stamped" WCDC on the side and that the detention center had prevented his mother from dropping off a suit for him to wear. Although the appellant did not request a continuance, *Knott* makes plain that once the court was alerted that the appellant had not appeared voluntarily in his prison attire and that

he had a means to obtain civilian clothing to wear, it had a duty to undertake an inquiry into whether the appellant was seeking a continuance or other relief to allow him to be tried in his civilian clothing. On this record, the appellant did not waive his right to be tried wearing non-prison garb and it was error to compel him to wear his prison clothing throughout the remainder of the first day of the jury trial.

We conclude, however, that unlike in *Knott*, the error in the case at bar was harmless beyond a reasonable doubt. The appellant's defense was lack of criminal agency. The evidence against him was overwhelming. Rohrer identified him as the robber both at the scene and at trial. Miller identified him as the robber at trial. Mr. Popp testified that the appellant was the man who showed up at his house immediately after the robbery wearing sunglasses, a long-sleeved shirt, and a red baseball cap -- the same clothes described by Rohrer and Miller and depicted on the bank surveillance video. Mr. Muto testified that the appellant showed up at his house shortly thereafter wearing no shirt. The appellant was arrested in the neighborhood where Mr. Popp and Mr. Muto lived, which was located immediately behind the M&T Bank. The police recovered sunglasses, a baseball hat, a long-sleeved shirt, and an envelope containing the money stolen from the bank in that neighborhood near homes where the appellant had been seen. The appellant's fingerprints were on the envelope, his DNA was on the sunglasses and the shirt, and his DNA could not be excluded as a contributor to a mixture of DNA on the hat.

High testified that the appellant planned the robbery and that she and Lacy were supposed to wait for the appellant in the Fountainhead neighborhood to help him escape after the robbery. A text message sent from the appellant's phone to High's phone immediately after the robbery corroborated her testimony.

Finally, the appellant called High from another inmate's phone account at the WCDC. High identified the appellant's voice on the recording of that phone call. During the call, the appellant tried to convince High to perjure herself to protect him. He also argued with High about whether she and Lacy had waited in the right place to pick him up after the robbery. All of this evidence overwhelmingly showed that the appellant was the man who robbed the M&T Bank.

Moreover, remarks made by the appellant during his opening statement, the recording of the appellant's telephone call to High, and the appellant's examination of Sergeant Nutter about his investigation into the use of WCDC phone accounts made plain, irrespective of the appellant's attire, that he was being detained pretrial at the WCDC.[6] Thus, any prejudice to the appellant occasioned by the jurors' knowing that he was incarcerated was not caused solely by his appearing before them in prison garb on the first day of trial. For all of these reasons, we conclude that the trial court's error was harmless beyond a reasonable doubt.

II.

[6]The appellant stated in opening that after his arrest on Judge Long's back patio, he had been taken away from his mother for 14 months. He also stated that the State would argue that he had been trying to "make bail" before trial so that he could flee the jurisdiction.

The appellant contends the trial court erred by failing to suppress certain evidence stored in digital format ("the digital evidence"), or, in the alternative, to grant a continuance given that he only was able to review the digital evidence nine days before trial. The pertinent facts are as follows.

On March 21, 2013, the State filed a "Certificate of Supplemental Discovery," stating that it had provided defense counsel the following items: 1) a CD of photographs; 2) a CD of the M&T Bank surveillance video; 3) two CDs of High's police interviews; 4) a CD of the appellant's cell phone records; 5) a CD of jail calls; and 6) a CD of a Sheetz gas station surveillance video.[7] At that time, the appellant's trial was scheduled to commence on April 1, 2013.

The trial date later was continued to July 18, 2013. On that day, the appellant moved to discharge his counsel and for a continuance. He explained to the court that he and his attorney did not see eye to eye on any aspect of his defense. In particular, the appellant alleged that defense counsel was trying to convince him to accept a plea deal and was unwilling to hire expert witnesses to rebut the DNA evidence and the evidence that it was the appellant's voice on the jailhouse phone call to High. The State opposed the motion, arguing that it was a "delay tactic."

[7]The photographs, the M&T Bank surveillance video, the cell phone records, and one jail call were introduced into evidence at trial. The Sheetz surveillance footage, High's police interviews, and the remaining jail calls were not introduced into evidence at trial.

The court granted the appellant's motion to discharge counsel and for a continuance. The appellant's discharged counsel advised the court that he already had turned over all of the written discovery to the appellant and that whenever new counsel entered his or her appearance, he would turn over the digital evidence to new counsel. The appellant advised the court that he was unsure whether he would hire private counsel or whether he would represent himself at trial. He asked the court how he would be able to review the digital evidence while he was incarcerated. The court responded that they would "cross the bridge" if the appellant decided to represent himself and, if that happened, the appellant should "file a request with the Court" and "arrangements [would] be made for [the appellant] to do that."

Trial was reset for November 7, 2013. By order of August 22, 2013, the court granted the State's request to continue the trial date due to a witness conflict and reset the trial for November 21, 2013.

By letter dated October 16, 2013, and received October 21, 2013, the appellant wrote to the court. He stated that he intended to represent himself at trial and requested a continuance until February of 2014. He noted that he needed to go through an "imense [sic] amount of Jailhouse phone calls, and save the ones [he] plan[ned] to use in [his] Defense." He also needed "to know which phone calls the prosecution [was] planning to use at trial." He requested that the court set the matter in for a suppression hearing on November 21, 2013 (instead of trial).

On November 1, 2013, the appellant appeared for a status conference and formally waived his right to counsel. He reiterated his request for a continuance to prepare his case. He told the court that he had not been able to review the digital evidence, noting in particular that the CD of the jail calls was lengthy. The court denied the appellant's continuance request. It emphasized that the appellant already had received a 4-month continuance on July 18, 2013. The court found that both the appellant and the State had had "abundant time" to prepare.

On November 6, 2013, the appellant filed a motion to suppress. As relevant here, he argued that the court should suppress "any . . . jail phone calls intended to be played at trial by the State" because he had been unable to listen to them.

On November 8, 2013, the State filed a new "Certificate of Supplemental Discovery" stating that on November 7, 2013, Detective Barnhart personally had delivered to the appellant at the WCDC all of the evidence listed in the March 21, 2013 Certificate, as well as other evidence not relevant to the issues on appeal.

On November 18, 2013, the court held a hearing on the appellant's motion to suppress. At that hearing, the prosecutor proffered that he had turned over all of the digital evidence to the appellant's former attorney and that that attorney had discussed those materials with the appellant. Because the appellant had discharged his counsel, WCDC had not allowed him to review those materials. Consequently, on November 12, 2013, an

investigator for the State met with the appellant at the WCDC and played all of the digital evidence for him.

The appellant confirmed that the State investigator had allowed him to review all of the digital evidence. The appellant explained that he had been "trying to hear [the recording of the jail call allegedly placed by him to High] again," but that WCDC would not permit him to do so. The appellant argued that the recording of that call should be suppressed because it was not his voice on the phone call. He further argued that all of the jail phone calls should be suppressed because they were recorded in violation of his rights under the Fourth Amendment.

The court permitted the State to play five of the seven recorded phone calls and denied the motion to suppress. At that time, the appellant made an oral motion to suppress the phone calls and other digital evidence because they were disclosed to him just nine days before trial. The court advised the parties that it would take up that motion on the first day of trial.

On November 21, 2013, after the jury had been selected, the court heard additional argument on the appellant's motion to suppress. The appellant explained that he had only been permitted to view the digital evidence once, on November 12, 2013, and that the recordings lasted more than 4 hours. He argued that this amounted to a discovery violation and warranted suppression of all the digital evidence.

The State responded that it had timely disclosed all the digital evidence on March 21, 2013. Six days after the appellant waived his right to counsel, on November 7, 2012, the State had, "out of an abundance of caution," provided directly to the appellant, at the WCDC, the same digital evidence previously provided to the appellant's attorney, and filed a new certificate of supplemental discovery to that effect. Five days after that, the State had arranged for the appellant to listen to and view all of that evidence at the detention center. The State maintained that it had complied with and even exceeded its discovery obligations. In any event, the State argued that if the court found the State had provided untimely disclosures to the appellant, the court should order a continuance rather than suppressing any of the evidence.

The court found that the State had complied with its discovery obligations with respect to all of the digital evidence by providing it to the appellant's attorney well in advance of trial. It denied the appellant's motion to suppress on that basis.

Before this Court, the appellant contends the circuit court "punished [him] for proceeding pro se" by ignoring his repeated requests to view and listen to the digital evidence and by denying his motion for a continuance, made in his October 16, 2013 letter and argued at the November 1, 2013 hearing. He further contends that the court erred by denying his motion to suppress that evidence on the basis of a discovery violation made at the November 18, 2013 hearing and heard on the first day of trial.

The State responds that the trial court made a non-clearly erroneous finding that the State fully complied with its discovery obligations under Rule 4-263. Therefore, the court did not abuse its discretion by denying the motion to the suppress the digital discovery that was timely disclosed to the appellant's attorney. Moreover, the State maintains, the court did not abuse its broad discretion by denying the appellant's motion for continuance made on November 1, 2013, the same day he waived his right to counsel, because the appellant already had been granted one continuance and had failed to request an opportunity to view the digital evidence until a month before trial.

We perceive no abuse of discretion by the trial court in denying the appellant's motion to suppress. As relevant here, Rule 4-263(d) requires the State to disclose to the defense, without the necessity of a request, relevant material or information obtained by a search or seizure and "all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial." In the instant case, the State discharged that obligation with respect to the digital evidence when, on March 21, 2013, it filed its certificate of supplemental discovery providing copies of all of the digital evidence it intended to use at trial to the appellant's attorney. Though not obligated to do so, the State provided the appellant with that same evidence on November 7, 2013 and arranged for him to review the evidence on November 12, 2013. Because the State fully complied with its discovery obligations, the

suppression of the digital evidence was not warranted as a sanction and the court properly denied the motion to suppress on that basis.

The trial court also did not abuse its discretion by denying the appellant's motion for continuance, made just three weeks before trial. The court instructed the appellant when he discharged his counsel on July 18, 2013 that if he decided to proceed *pro se*, he needed to "file a request with the Court" so that the court could make "arrangements" for him to view the digital evidence. Nevertheless, the appellant waited until October 16, 2013, nearly three months after he discharged his counsel and just over a month before trial was set to begin, to advise the court that he intended to represent himself and to request a continuance to prepare for trial. The appellant did not advise the court in that letter that he had been unable to listen to and /or view any of the digital evidence or otherwise request that arrangements be made for him to do so.

The court denied the appellant's request for continuance at the November 1, 2013 hearing, finding that he had had "abundant time to know what this case is about . . . and to properly prepare for trial." The court did not abuse its discretion in so ruling. *See Davis v. State*, 207 Md. App. 298, 308 (2012) ("The decision of whether to grant a request for continuance is committed to the sound discretion of the court.") (quotation marks and citation omitted). The appellant had access to the digital discovery material for many months before he discharged his counsel. He waited nearly three months after he discharged his counsel to notify the court of his intention to represent himself and waited until eleven days before trial

to request that arrangements be made for him to review the digital evidence. The appellant already had been granted one continuance to allow him to prepare for trial. Under these circumstances, the court appropriately exercised its discretion to deny the motion for continuance.

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