Circuit Court for Baltimore City
Case No. 116334005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 963

September Term, 2018

RICHARD WESTCOTT

v.

STATE OF MARYLAND

Graeff,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Graeff, J.

Filed: February 26, 2020

The Circuit Court for Baltimore City, in a bench trial, convicted Richard Westcott, appellant, of possession of heroin with the intent to distribute and two counts of possession of a regulated firearm after a conviction of a drug felony. The court imposed concurrent sentences of ten years, all but five suspended.

On appeal, appellant presents the following two issues for the Court's review:

1. Did the circuit court err in failing to suppress Mr. Westcott's statements?

2. Did the circuit court err in failing to grant Mr. Westcott's Motion to Dismiss the charges against him because he was not personally present at his arraignment?

For the reasons that follow, we conclude that there was no error, and therefore, we shall affirm appellant's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

As discussed in more detail, *infra*, the court denied appellant's pre-trial motions to suppress evidence and to dismiss all charges. Appellant then elected a bench trial, and the prosecutor presented the following agreed "not guilty statement of facts":

> [O]n November 3, 2016, at approximately 7:30 p.m. Baltimore police officers executed a search and seizure warrant for 1723 East Federal Street.
>
> The Defendant, Mr. Richard Westcott, was located inside the first floor front right room. The Defendant was also the target of the warrant. There were two other occupants, two other adult occupants in the home.
>
> All occupants were then secured and taken in the kitchen and Mirandized where the Defendant acknowledged that he understand [sic] his rights under *Miranda*.[1] A search of the house was conducted.

[1] For consistency, we have italicized transcript references to *Miranda v. Arizona*, 384 U.S. 436 (1966).

Recovered from the first floor front right room where the Defendant was seated was a Taurus PT 709 9mm handgun, Serial Number TFT63180 with a magazine holding six 9mm rounds on top of a black trash bag under a black bag.

There was also a Hi-Point Model JHP .45 caliber handgun, Serial Number X449658, with a magazine holding eight .45 caliber rounds from on top of a chair under a jacket. The Defendant was seated about a foot from that gun.

There was a 9mm round found underneath a coffee table in that room. There was also a container of marijuana, less than 10 grams. There was a plastic bag containing four clear gelcaps of suspected heroin that was recovered from the top of a plastic storage bin.

There was $40 recovered from the storage bin. There was also a plastic bag containing 13 gray-top vials of suspected cocaine from a metal container on top of the storage bin.

There was $100 from the metal container on top of the storage bin. There was a digital scale with suspected cocaine residue. There was also court papers with the Defendant's name and the address of 1723 East Federal Street.

Officers also located the Defendant's social security card in his name recovered from the kitchen. There was body armor over in the corner against the wall of the refrigerator. There was packaging material from on top of the kitchen cabinets.

There was a plastic bag containing 29 clear gelcaps with suspected heroin from the top of the kitchen cabinet left side. There was also six small caliber rounds from the kitchen right top drawer.

The guns found in the Defendant's room came back stolen through the Maryland Gun Center. The detectives asked the Defendant if the guns found were his and he responded "Yes. No." and then made other statements.

The Defendant admitted on body-worn camera that he sells drugs to pay his rent and that he has been selling drugs for too long. All evidence in this case was submitted to the Baltimore City Police Evidence Control Unit.

> The State will submit as State's Exhibit 1 a copy of the Firearms Examiner's Report for the Hi-Point JHP, Serial X449658. . . .
>
> State's Exhibit 2 is the operability report, again, for the Taurus PT-709. . . .
>
> The Defendant is prohibited from possessing a firearm and ammunition because he was convicted on November 28, 2000, for possession with intent to distribute. The State will also enter as State's Exhibit 3 a true test copy of that conviction.
>
> The suspected CDS [i.e., controlled dangerous substances] in this case were recovered, packed, submitted, and analyzed in accordance with . . . guidelines. The State will submit as State's Exhibit 4 a copy of the chemical analysis indicating that the substance recovered from . . . Mr. Westcott's home, was heroin . . . . The cocaine also came back positive . . . .
>
> If called to testify the officers would identify the Defendant as the person in possession of the guns on the date and time in question. They would also testify that the amount of drugs recovered and the manner in which they were packaged indicate that the Defendant possessed the drugs with an intent [to] distribute and not for mere personal use. All events occurred in Baltimore City, State of Maryland.

As indicated, appellant was convicted of possession of heroin with intent to distribute and two counts of possession of a regulated firearm after a conviction of a drug felony. This appeal followed.

DISCUSSION

I.

Admissibility of Post-Miranda Statements

Appellant contends that the circuit court erred in denying his motion to suppress the statements he made to police. Specifically, he argues that the State failed to establish: (1)

that the statements "were voluntarily made"; and (2) that he "validly waived his *Miranda* rights with the requisite understanding of those rights."

When reviewing the denial of a motion to suppress evidence, this Court considers only the record developed at the suppression hearing. *See State v. Johnson*, 458 Md. 519, 532 (2018). We view that evidence in the light most favorable to the State, as the prevailing party, and accept the motion court's findings of fact unless they are clearly erroneous. *See id*.; *Sizer v. State*, 456 Md. 350, 362 (2017). The motion court's legal conclusions are subject to *de novo* review because we make "our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case." *Gupta v. State*, 452 Md. 103, 129 (quoting *Rush v. State*, 403 Md. 68, 83 (2008)), *cert. denied*, 138 S. Ct. 201 (2017).

A.

Proceedings Below

At the suppression hearing, the State presented testimony by Baltimore City Police Detective Kevin Fassl, as well as the body camera video showing the *Miranda* warnings given by Detective Fassl and appellant's statements. Detective Fassl testified that, on November 3, 2016, he executed a search warrant at 1723 East Federal Street in Baltimore City, a single family rowhouse with different tenants occupying separate rooms. When Detective Fassl entered, he immediately saw appellant in the room to the right, sitting in a chair playing a video game. Appellant was secured and moved to the kitchen with two other residents.

Detective Fassl testified that he advised appellant of his *Miranda* rights, and appellant verbally acknowledged that he understood his rights. Appellant did not ask to speak to an attorney, and Detective Fassl denied that he threatened or coerced appellant or promised him anything.

Detective Fassl was wearing a body camera, and the video was admitted into evidence and played for the court. Detective Fassl next testified about statements made by appellant after he advised appellant of his *Miranda* rights:

> [PROSECUTOR]: And you testified that you Mirandized the Defendant and he understood his rights. What if any statements did the Defendant make to you after he was advised of his *Miranda* rights?
>
> (Video of Detective Fassl's body-worn camera footage paused – 10:42:48 a.m.)
>
> [DET. FASSL]: At one point after CDS was recovered from the front right room he stated that they were his.
>
> [PROSECUTOR]: Okay. Anything else?
>
> [DET. FASSL]: Additionally, when two handguns were recovered from the front right room Mr. Westcott made a comment about there is no need for theatrics, one gun or two, and then I asked if the guns were his and he said "Yes. No."
>
> [PROSECUTOR]: Okay. And did you at any point hear another conversation with the Defendant was having post-*Miranda*?
>
> [DET. FASSL]: Yes, ma'am. At one point Detective Hill, who was on the raid team with us asked how long Mr. Westcott had been doing it, referring –
>
> [PROSECUTOR]: Doing what?
>
> [DET. FASSL]: It's referring to selling drugs. And Mr. Westcott as I recall said "awhile," and he said he was doing it to pay his rent.

The prosecutor then played the *Miranda* portion of the recording. After Detective Fassl read the *Miranda* rights to the three persons in the kitchen, appellant acknowledged that he understood his rights.[2] When Detective Fassl asked if there was anything in the house that the police needed to know about, the following occurred:

> Mr. Westcott: Yes. He got the drugs I had in there on the thing (indiscernible).
>
> Det. Fassl: Those were yours?
>
> Mr. Westcott: Yes, sir, they were mine.

At times, acoustics made the audio on the recording difficult for both the court and counsel to understand. When the prosecutor paused the footage at this point, Detective Fassl explained that appellant "was saying that the drugs that were located were his." Defense counsel asked for that portion of the recording to be replayed. The court and counsel then reviewed that portion of the recording twice more.

The video showed that the police began to inventory cash in appellant's front left pocket and two firearms that were found. Detective Fassl asked if the guns were appellant's, and appellant replied: "Yes. No, I didn't say that. I said (indiscernible) I didn't say they were my guns."

The circuit court stated that it did not "understand . . . one word." Detective Fassl then testified that appellant "was saying there is no need for dramatics, two guns doesn't

[2] Although appellant's verbal response is inaudible, the video clearly shows appellant nodding affirmatively when Detective Fassl asks whether he understands his rights.

change anything, and I asked are they your guns and he said, 'Yes. No.' and then he said, 'That's not what I am saying.'"

The recording continued with the inventories of the two weapons, including where they were discovered in appellant's room, and the cash recovered on appellant and in his room. The detective asked appellant at various times if he was "all right," whether he was "cramping up," and how he was doing. Each time, appellant insisted he was "all right."

Appellant later answered additional questions about how long he had resided there and his contact information. When the recording was paused again, the court observed that this point was "one hour on body cam[.]"

After the prosecutor resumed the recording, the police continued a discussion with appellant as follows:

> Det. Fassl: Can you sign this for me, please? It's just a copy (indiscernible) carbon copy carbon paper. . . .
>
> * * *
>
> Male: Why you selling drugs, Richard?
>
> Mr. Westcott: To pay the rent.
>
> Male: Hmm?
>
> Mr. Westcott: To pay the rent because I can't find a job.
>
> Male: Pay your rent?
>
> Mr. Westcott: Yes. I can't find a job.
>
> Male: Why can't you get a job?
>
> Mr. Westcott: (Indiscernible).

Male: How long you been –

Mr. Westcott: (Indiscernible).

Male: Selling dope, coke?

Mr. Westcott: I don't know.

Male: Too long?

Mr. Westcott: Yes, (indiscernible).

Male: How old are you, my man?

Mr. Westcott: Forty-nine.

Male: How tall are you?

Mr. Westcott: Six feet.

Male: How much you weigh you think?

Mr. Westcott: Two hundred.

Male: Your eyes are brown?

Mr. Westcott: Yes.

On cross-examination, Detective Fassl confirmed that, when the police entered appellant's residence, they immediately cuffed his hands behind his back. Appellant remained seated on a stool in the kitchen, which was the only room with enough seats to accommodate everyone in the residence. It took about fifteen minutes to gather everyone for *Miranda* warnings, which were given at 7:47 p.m. There were approximately eleven officers on the warrant team, who were "coming in and out telling" Detective Fassl what they were recovering.

Defense counsel elicited from Detective Fassl that he did not question appellant about any medical or mental health issues he might have or any medication he was taking. Nor did he inquire how far appellant went in school, whether he could read or write, or otherwise "check with Mr. Westcott to see . . . if he was under the influence of anything that would interfere with the way that he was understanding that evening[.]" Although the detective did not ask appellant to sign or initial anything to acknowledge his understanding of his right to remain silent, Detective Fassl "went individually to each person and asked them if they understood," and they said yes.

Defense counsel argued that appellant's post-*Miranda* statements were not voluntary because there was "a subtle coercion" given that the questioning occurred as eleven police officers were "coming in and out of the kitchen" in the midst of "the chaos of the search going on at the same time." Adding to that coercive setting, counsel maintained, was "[t]he length of the time that [appellant] sat there handcuffed in that position[.]"

Regarding whether appellant knowingly waived his right to remain silent, defense counsel argued that Detective Fassl "could not . . . testify affirmatively that he is sure that [appellant] understood what was being explained to him," in a "perfunctory" manner, without "the care that they are normally delivered in the setting of an interview room." Moreover, the detective did not inquire about mental illness, medical or physical needs, or educational background.

The circuit court determined that appellant's statements were voluntarily given after a valid *Miranda* waiver, stating:

> I found Detective Fassl to be a credible witness and in observing the more than one hour of the body camera videos shown in the courtroom I found Detective Fassl to be courteous toward Mr. Westcott and in no way was he abusive or loud toward Mr. Westcott and in no way was he threatening toward Mr. Westcott.
>
> In terms of having the questions in the kitchen, in many respects the kitchen is probably less coercive than a small room in police headquarters or in a police station, but I find nothing in the videotapes that would indicate there were any threats, promises, or coercion.
>
> The *Miranda* rights were rendered, albeit to a group, but I find from the evidence presented that Mr. Westcott understood his *Miranda* rights and that he did verbally acknowledge that understanding.
>
> Drugs and guns were recovered from his room and any inconsistencies or conflicts in his testimony or statements are matters for a jury to resolve if this case goes to trial.
>
> He seemed to me to be aware of where he was. He was asked questions as I recall toward the end about his height, weight, age, color of his eyes, and he seemed to be as normal as I would see a person.
>
> Counsel for the Defendant alluded to questions about medicines, schooling, mental health. These might be appropriate in inquiring if someone wants to enter a guilty plea.
>
> However, we are here to determine today the admissibility of statements made. No case law requires additional or supplementary *Miranda* warnings about education, medication, mental health, or physical health.
>
> In summary, I would deny the motion to suppress, and although redundant, find that any statements made were made voluntarily and there were no threats or promises. That is my decision.

B.

Analysis

"To be admissible in evidence, a confession must be voluntary under Maryland non-constitutional law, the due process clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and obtained in conformity with *Miranda v. Arizona*." *Perez v. State*, 168 Md. App. 248, 267–68 (2006). As indicated, appellant challenges his statements on the grounds that the State failed to show that they were voluntary and that he validly waived his *Miranda* rights.

1.

Voluntariness

The State has the burden of establishing, by a preponderance of the evidence, that the challenged statements were voluntarily made. *Winder v. State*, 362 Md. 275, 305–06 (2001). As this Court has explained,

> a statement is involuntary if it results from "police conduct that overbears the will of the suspect and induces the suspect to confess." Under Maryland non-constitutional law, a statement is involuntary when a suspect "is so mentally impaired that he does not know or understand what he is saying, or when the confession is induced by force, undue influence, improper promises, or threats." To determine whether a suspect's statement was voluntary, the trial court must consider the totality of the circumstances, including, *inter alia*, "the length of the interrogation, the manner in which it was conducted, the number of police officers present throughout the interrogation, and the age, education and experience of the suspect."

Ford v. State, 235 Md. App. 175, 187 (2017) (citations omitted), *aff'd on other grounds*, 462 Md. 3 (2018). Among the "non-exhaustive list of factors" we may also consider are when and how *Miranda* warnings were given, whether the interrogation included physical or psychological pressure, whether the suspect was taken before a commissioner in a timely manner, and the suspect's physical condition. *Winder*, 362 Md. at 307; *Hof v. State*, 337 Md. 581, 596–97 (1995).

In appellant's view, "[t]he only factors which militate in the State's favor are the fact that *Miranda* warnings were given; that [he] was brought before a court commissioner; and there was no evidence of physical or psychological maltreatment." Appellant argues that these factors are outweighed by several other factors that "strongly militate against a finding that [his] statement was voluntary." In that regard, he asserts:

> [T]he interrogation was conducted in the kitchen of the residence, where three adults were issued *Miranda* warnings *en masse*. The circumstances were not the placid setting of an interview room; there were . . . eleven officers in that home, each reporting to Det. Fassl what was found within the home as those items were discovered. Thus, the coercive impulse to offer a[] statement increased commensurately upon each additional report to Det. Fassl that an incriminating item was found in the home. [Appellant] remained handcuffed for over an hour, and during the entire time he was questioned. In short, for over an hour, [appellant] remained handcuffed in custody while eleven officers searched the home and made contemporaneous reports of the incriminating results of that search to his interrogator; these circumstances weigh very heavily against a finding that the ensuing statements were made voluntarily.
>
> In examining [appellant's] mental and physical condition; his age, background, experience, education, character, and intelligence; and the potential fact that he may have been under the influence of a substance[], these factors additionally militate in [his] favor. . . . Detective Fassl did not question [appellant] about any medical conditions he may have; did not ask

> about any mental health issues he may have; did not ask about any mental health issues he may have; did not ask if he was taking any medication; did not ask how far [he] progressed in school; did not inquire whether [he] was under the influence of any substance which would interfere with his ability to understand; and did not ask whether [he] was under the care of a mental health provider.

(Citations and footnote omitted.)

The State contends that appellant's statements were voluntary. It asserts that "[t]he record does not show any improper coercion or inducement of [appellant] by the police," during a "relatively brief encounter with police in a place familiar to" appellant, that appellant acknowledged that he understood his *Miranda* rights, and there was no evidence that appellant's "will was compromised by a medical or mental condition." To the extent that appellant "takes issue with questions Detective Fassl *did not* ask him, including questions about his level of intoxication and medical condition[,]" the State argues that it "is not required to disprove every conceivable pressure on the defendant's will, whether supported by the record or not."

Based on our review of the record, we conclude that the circuit court did not err in finding that appellant's post-*Miranda* statements were voluntary. The circuit court found that Detective Fassl was courteous to appellant during the one-hour time in his home, and appellant agrees that there was "no evidence of physical or psychological maltreatment." Appellant indicated that he understood his *Miranda* rights, and there was no indication that appellant was mentally incapacitated. Absent any behavior that would indicate to a reasonable officer in those circumstances that appellant suffered from a physical or mental

impairment, Detective Fassl was not obligated to examine appellant regarding his mental and physical health. The circuit court properly found that appellant's statements were voluntary.

2.

***Miranda* Waiver**

Appellant next contends that the State failed to show that he "validly waived his *Miranda* rights with the requisite understanding of those rights." He asserts that there was "zero evidence" that he understood the rights explained to him.

The State contends that appellant "both understood his *Miranda* rights and verbally acknowledged his understanding." It argues that appellant's ensuing failure to invoke his right to silence when asked questions is sufficient to establish his "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986); *Lee v. State*, 418 Md. 136, 150 (2011).

In *Miranda*, 384 U.S. at 467, the Supreme Court held that, in order to combat the "inherently compelling pressures" of custodial interrogation, "which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely[,]" police must advise any person taken into custody of certain constitutional rights and procedural protections, which are now so well-known that they are commonly referred to as *Miranda* rights and warnings. *Reynolds v. State*, 461 Md. 159, 178 (2018), *cert. denied*, 139 S. Ct. 844 (2019). Specifically, the individual in custody

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda, 384 U.S. at 479. A suspect may waive these rights, as long as "the waiver is made voluntarily, knowingly, and intelligently." *Id.* at 444.

The State bears the burden of establishing an effective *Miranda* waiver by a preponderance of the evidence. *Colorado v. Connelly*, 479 U.S. 157, 168 (1986). As the Supreme Court has made clear,

> [a]lthough *Miranda* imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a *Miranda* warning, it does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights. As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford. The Court's cases have recognized that a waiver of *Miranda* rights need only meet the standard of *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019 (1938). . . . *Miranda* rights can therefore be waived through means less formal than a typical waiver on the record in a courtroom, *cf.* Fed. Rule Crim. Proc. 11, given the practical constraints and necessities of interrogation and the fact that *Miranda*'s main protection lies in advising defendants of their rights[.]

Berghuis v. Thompkins, 560 U.S. 370, 385 (2010) (some citations omitted).

Consequently, "[w]here the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." *Id*. at 384. Such a waiver "need not be express, but may be inferred from the suspect's very behavior in making a statement after

having received the *Miranda* advisements." *In re Darryl P.*, 211 Md. App. 112, 171 (2013).

Here, the record reflects, and the circuit court found, that Detective Fassl advised appellant of his right to remain silent, that appellant expressly stated that he understood this right, and that appellant then admitted his ownership of the drugs and guns found in his room, as well as his sale of CDS "to pay the rent." The court's finding that appellant understood his *Miranda* rights was not clearly erroneous.[3]

The circuit court did not err in denying appellant's motion to suppress his statements.

II.

Motion to Dismiss

Appellant next contends that the circuit court erred in denying his motion to dismiss the charges against him, asserting that "he was denied the ability to personally appear before the court at his arraignment." He argues that "arraignment is a critical stage of the proceedings in a criminal case," and "his attendance was mandatory at such a proceeding."

[3] *Higginbotham v. State*, 104 Md. App. 145 (1995), upon which appellant relies, is inapposite. In that case, supplemental explanations for words in the written *Miranda* warnings were reasonably necessary because the suspect had difficulty understanding those terms. *Id*. at 164–65. Here, in contrast, there was no comparable literacy or vocabulary impediment, and the *Miranda* warnings were announced orally rather than presented in writing. In these materially different circumstances, *Higginbotham* is not persuasive authority for the contention that additional questioning regarding appellant's mental capacity was necessary.

The State contends that the court properly denied appellant's motion to dismiss. It asserts that the "proceedings below amounted in substance to an arraignment," and appellant was not deprived of any right to be present.

An arraignment is "[t]he initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea." *Black's Law Dictionary* 116 (8th ed. 2004). In Maryland, an arraignment is referred to as an initial appearance. *See McCarter v. State*, 363 Md. 705, 716 (2001); Md. Rule 4-213. The absence of a formal arraignment is not a ground for reversal of a defendant's conviction. *Ayala v. State*, 226 Md. 488, 491–92 (1961). When the record shows that a defendant "was given every protection afforded him by the rule[,]" such "substantial compliance" with the rule is sufficient. *Wilkins v. State*, 5 Md. App. 8, 16 (1968).

A.

Proceedings Below

Defense counsel entered her appearance on behalf of appellant on January 9, 2017, and continued her representation throughout the case. Appellant's initial appearance was scheduled for January 13, 2017, the date the court received appellant's pro se Motion to Affirm Defendant's Right to be Present at Critical Stages of Trial. In that pleading, hand-dated January 4, 2017, appellant asserted: "The Arraignment stage of trial is a Critical and Important Stage of trial and Defendant Requests and Affirms his Right to be present." As explained below, however, defense counsel and the prosecutor removed appellant's case from the initial appearance docket, in accordance with Baltimore City's local court policy.

On June 5, 2018, at the motions hearing, appellant moved to dismiss the charges because he was "denied attendance to [his] arraignment." Defense counsel advised the court that, because appellant had been indicted on the morning he was scheduled for his initial appearance, "there was no preliminary hearing," and the prosecutor and defense counsel, "per the court's policy, pulled this case off the arraignment dock[et]." The court asked appellant whether he understood the charges against him. Appellant replied: "Yes, sir."

The court denied the motion to dismiss, explaining:

> With respect to the preliminary hearing and the arraignment, you are familiar with the charges placed against you, that's one of the purposes of an arraignment, and, further, on the preliminary hearing . . . . [t]he matter was the subject of an indictment, which is part of a process.
>
> I believe and find that you were afforded due process under the totality of the circumstances. I therefore am denying your motion to dismiss the charges against you.

Following a lunch recess, defense counsel made a further proffer regarding appellant's motion, explaining why there had been no initial appearance:

> It used to be that defendants were physically brought in front of a court, handed the indictment, he had counsel present beside him, unlike Baltimore County, which years ago had changed their local rules for the arraignment procedure, Baltimore City did so I believe in 2016 as Mr. Westcott had said.
>
> But it was the purview of the criminal courts to change it and they made it now that defendants are no longer brought to arraignment unless a plea is struck between defense counsel and the State and then a judge would do the plea at that arraignment.
>
> So now no defendants are brought to arraignment in court. . . .

> . . . [I]t has been changed, the way that arraignments are now done. Defendants are not present and it streamlines the process. It was my understanding at my office that it was a local rule and then the courts in Baltimore City decided to mirror or mimic the other jurisdictions that did it that way.
>
> They no longer have formal advisement on the record. The counsel is given the indictments and chooses the trial dates without the defendant being present. But it was I believe within the purview of the Circuit Court Criminal Division and the judges who changed the procedure.

Appellant, again arguing on his own behalf, objected to this "streamlined" procedure on several grounds that he maintained made it "unconstitutional." First, he complained that "it limits a defendant's plea because if a defendant doesn't show up the only plea that can be offered or represented by his counsel is not guilty." Second, "it allows counsel to act arbitrarily against the wishes of a competent client because they choose everything and the client has no input or insight[.]" Third, "the responsibility of a court to convey to your defendant the notice of charges, the penalties, and his rights" has been "delegated then to the public defender when it's the responsibility of the court[,]" so appellant did not receive notice of the changes until "May of '17." Finally, appellant argued, "the court is precluded from trying to understand whether" the representations made by a public defender and the decisions made by a defendant "were made knowingly, willingly, and intelligently."

The court again denied appellant's request to dismiss, stating:

> [T]here is no constitutional right per se to an arraignment. What there is a constitutional right to is notification of your charges and representation by a lawyer.

> But the Maryland Rules and the Courts [and] Judicial Proceedings Article does [sic] not have the word "arraignment" in there. The important part of the idea or concept of an arraignment is that it is a procedure whereby the criminal charges are conveyed to the defendant.
>
> The defendant has a right to, can plead, and would get copies of the charging documents, but now during this period of time in Baltimore City it is done through counsel.
>
> So the rights, the constitutional rights that protect defendants, you, Mr. Westcott, were practiced and you were not denied any constitutional right. Therefore, to the extent that you are asking me, I deny your motion to dismiss the charges because your constitutional right to an arraignment was violated because I hold that there is no such constitutional right . . . and that what is to be accomplished by an arraignment is accomplished through the Maryland Rules for initial appearances and appearances by attorneys.

B.

Analysis

Appellant contends that Rule 4-231(b) guarantees him the right to be present for an arraignment in the circuit court because it is a "critical stage" in the criminal proceedings against him. And because he was denied the right to personally appear at his arraignment, the court erred in denying his motion to dismiss the charges. We disagree.

Initially, as the State notes, Rule 4-231(b) does not provide that a defendant has the right to be present at an arraignment, i.e., an initial appearance. Rule 4-231(b) provides that a defendant is entitled to be present "at a preliminary hearing and every stage of trial," but an initial appearance is neither a preliminary hearing nor a stage of the trial. As the Court of Appeals has explained: "In Maryland, an arraignment has never been considered a critical stage of the proceedings" for purposes of determining when counsel for the

accused must be present, "so long as no prejudice to the accused results such as the acceptance of a guilty plea." *Ramsey v. State*, 239 Md. 561, 568 (1965) (citation omitted); *accord Gopshes v. Warden*, 240 Md. 732, 733 (1965).

Indeed, the Court of Appeals has held that there is no right, constitutional or otherwise, to have a formalized arraignment or initial appearance, as long as "what has been done amounts in substance to" such a proceeding. *See Ayala*, 226 Md. at 492. Here, counsel for appellant entered her appearance four days before the scheduled arraignment. Counsel was given a copy of the indictment, and appellant stated at the motions hearing that he understood the charges against him. As the State notes, the procedure here served the purposes of arraignment: "[Appellant] was represented, his counsel received the charging document, he understood his charges, and was allowed to proceed in his case in the manner of his choosing."[4]

The circuit court did not err in denying appellant's motion to dismiss based on the denial of an opportunity to appear before the court for an arraignment or initial appearance.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] The State's failure to file written opposition to his motion to dismiss, did not, as appellant suggests, entitle him to dismissal. There was no requirement for the State to file a written response to appellant's motion. *See* Md. Rule 4-252(f) provides: "A response, **if made**, shall be filed within 15 days . . . ." (Emphasis added.) And, because appellant's motion was not filed until May 24, the State's 15-day response period had not yet expired at the time of the June 5 hearing date. Appellant's contention in this regard is devoid of merit.