Circuit Court for Washington County
Case No. 21-K-17-054044

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2041

September Term, 2018

WILLIAM JACK CALDWELL

v.

STATE OF MARYLAND

Fader, C.J.,
Wells,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 6, 2020

William Jack Caldwell,[1] the appellant, was convicted by a Washington County jury of multiple drug and traffic crimes as a result of drug buys conducted by confidential police informants. Mr. Caldwell now argues that the Circuit Court for Washington County erred in (1) failing to admit into evidence an audio recording of a police officer's alleged prior inconsistent statement made during a preliminary hearing, (2) granting the State's motion to postpone Mr. Caldwell's trial beyond the 180-day *Hicks* deadline, and (3) delaying its ruling on Mr. Caldwell's request to discharge his counsel. We find no error, and so affirm.

BACKGROUND

Factual Background[2]

On the evening of August 29, 2016, Agent Frank Toston, a Hagerstown police officer assigned to the Washington County Narcotics Task Force, directed confidential informants John Thielemann and Susan Stickell to make a controlled drug buy.[3] As instructed, the informants placed a telephone call to the target of the investigation, a man known to them as "Whisper" or "Whispers," and arranged to buy heroin and cocaine from him. Mr. Thielemann identified that man at trial as Mr. Caldwell, whom he said he had known for "maybe a few months" before the first controlled buy. After police searched

[1] Mr. Caldwell also goes by the name "William Jack Caldwell-El." We refer to him as Mr. Caldwell, the name by which he is listed in the case caption.

[2] The facts provided are taken from the trial testimony, construed in the light most favorable to the State. *See Fuentes v. State*, 454 Md. 296, 307 (2017).

[3] Mr. Thielemann and Ms. Stickell had become confidential informants a few weeks earlier, after police had found heroin paraphernalia in their vehicle during a traffic stop.

the confidential informants and their vehicle and provided them with marked currency, the informants drove to an arranged location. The police followed and set up surveillance.

Shortly after they arrived at the location, Mr. Caldwell approached on foot and entered the back seat of the vehicle. Ms. Stickell and Mr. Caldwell then exchanged money for drugs. The informants drove back to the police station, where Ms. Stickell provided the police with two plastic bags obtained from Mr. Caldwell, one of which contained cocaine.

Agent Ron Isaacs videotaped the scene. The video, which the State introduced into evidence and played for the jury, shows a man approaching and entering the back seat of the vehicle. The man is only partially visible in the dark setting, but Agent Isaacs identified Mr. Caldwell as the man he saw that day.

On September 15, police directed the informants to make a second controlled buy, following the same procedure. Shortly after the informants called the suspect and drove to the arranged location, Mr. Caldwell again arrived on foot, entered the back seat of their vehicle, and exchanged money with Ms. Stickell for what police later determined to be heroin and cocaine. At trial, Mr. Thielemann identified Mr. Caldwell as the seller. Agent Toston testified that he did not personally observe Mr. Caldwell that day, but that another officer had observed the exchange and identified Mr. Caldwell as the seller.

Police planned to arrest Mr. Caldwell upon completion of a third drug buy on September 29. Following the same procedure, the informants requested a meeting to purchase heroin and cocaine. While waiting at the arranged location, Mr. Thielemann saw Mr. Caldwell drive up in a white van and pull into a nearby alley. Agent Jay Mills, a Task

Force officer wearing a vest with the word "POLICE" written across the front, then pulled his unmarked vehicle in front of the van, activated his emergency equipment, exited his vehicle, and walked toward Mr. Caldwell, who was still sitting in the van's driver's seat. Mr. Caldwell backed his van into a police vehicle that had pulled behind him and drove away, instigating a chase. The State subsequently arrested Mr. Caldwell and charged him with several counts of possession and distribution of controlled dangerous substances, attempt to elude police, and related offenses.

Pretrial Proceedings

The following chronology of pretrial proceedings is relevant to this appeal:

- On October 5, 2017, public defender Thomas Tamm entered his appearance on behalf of Mr. Caldwell.
- On November 3, 2017, Mr. Caldwell filed with the Clerk of the circuit court a document stating that he had "fired [his] attorney" and intended to represent himself.
- On January 9, 2018, the parties appeared for what had been scheduled to be the first day of Mr. Caldwell's trial. In advance of the appearance, however, Mr. Tamm had informed the State that he would not appear because he was ill, and that trial would not go forward that day. As a result, the State did not bring its witnesses. Mr. Caldwell moved to discharge Mr. Tamm, but the court declined to hear the motion in Mr. Tamm's absence. Mr. Caldwell also told the court that he was ready to proceed to trial at that time. The State, which had not brought its witnesses in light of Mr. Tamm's representation that trial would not proceed, requested a postponement, which the court granted. The court rescheduled trial for March 22.
- On February 8, 2018, during a status hearing at which Mr. Tamm was present, the court heard and granted Mr. Caldwell's motion to discharge his counsel and proceed pro se.
- On March 6, 2018, the parties appeared for a pretrial motions hearing, with Mr. Caldwell appearing pro se.
- On March 15, 2018, the State moved in writing for a continuance to secure the attendance of Agent Mills—whom it alleged was "a necessary witness to a

number of the counts" in Mr. Caldwell's case—after it learned that he was unavailable on March 22 due to a law enforcement training.

- One day later, the court issued an order granting the continuance for "[g]ood cause found."
- On March 23, 2018, Mr. Caldwell filed an opposition to the State's motion for a continuance, arguing that the request lacked good cause.

Mr. Caldwell's jury trial took place on May 17, with Mr. Caldwell appearing pro se.[4] Several witnesses, including Agent Mills, testified at trial generally to the facts set forth above. A jury convicted Mr. Caldwell of two counts of distributing cocaine; two counts of possessing cocaine; three counts of possessing drug paraphernalia; and one count each of distributing heroin, possessing heroin, attempting to elude a police officer, failing to stop after an accident, and failing to remain at the scene of an accident. The court subsequently sentenced Mr. Caldwell to serve a total of 40 years in prison, with ten years suspended, followed by five years' probation. Mr. Caldwell appealed.

DISCUSSION

I. ANY ERROR IN DECLINING TO ADMIT AN ALLEGED PRIOR INCONSISTENT STATEMENT WAS HARMLESS.

Mr. Caldwell first argues that the trial court erred in declining to admit into evidence an audio recording that contained a prior inconsistent statement made by Agent Toston. On cross-examination at trial, Agent Toston testified that although he had not witnessed Mr. Caldwell at the second controlled buy, another officer had. Mr. Caldwell then asked Agent Toston about testimony he gave at a preliminary hearing several months earlier,

[4] Although he was not represented by counsel at his trial, Mr. Caldwell is represented by the Office of the Public Defender in this appeal.

during which Agent Toston had stated that he did not know whether any other officer had witnessed that transaction. Mr. Caldwell asked the court to admit into evidence a CD containing an audio recording of that prior testimony. The court sustained the State's objection to the recording and declined to admit the CD. Mr. Caldwell contends the court erred in doing so. The State argues that the circuit court did not err in sustaining the State's objection, and that even if it did err, the error was harmless. We agree that any error was harmless.

A. The Recovered Recording

The circuit court forwarded the record to this Court without a copy of the CD containing Agent Toston's prior testimony. Neither party initially moved to correct or supplement the record. As a result, the State argued in its opening brief that Mr. Caldwell had failed to preserve this argument for our review. In an unreported opinion, we agreed with the State and held that this issue was not preserved for our review. We explained:

> "[O]n appeal, the burden of establishing error in the [trial] court rests squarely on the appellant." *State v. Chaney*, 375 Md. 168, 184 (2003) (quoting *Bradley v. Hazard Tech. Co.*, 340 Md. 202, 206 (1995)). Mr. Caldwell thus bears the "burden of producing a record to rebut the general presumption that a trial court's actions are correct." *Fields v. State*, 172 Md. App. 496, 513 (2007); *see also Mora v. State*, 355 Md. 639, 650 (1999) ("It is incumbent upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed[.]").
>
> Mr. Caldwell has not met this burden. He has not made a recording or transcript of the alleged prior inconsistent statement part of the record. Without this evidence, we are unable to determine the merits of Mr. Caldwell's claim, and it is not properly presented for our review. *See Mora*, 355 Md. at 649-50 (declining to decide expungement-related claims "in a vacuum" where the record did not include the expungement orders).

In a motion for reconsideration, Mr. Caldwell produced a letter from the Supervisor of the Criminal Department of the Clerk's Office for the Circuit Court for Washington County to Mr. Caldwell's counsel that stated, in full: "In the above case there was one audio exhibit (Defense #6). On November 28, 2018 the exhibit was sent to the Court of Special Appeals. Enclosed is a copy of the certification of the transmittal of that exhibit." As we explained in a subsequent order, the letter was inaccurate:

> The document attached to that letter is a certification dated November 28, 2018, the substance of which states in full: "I HEREBY CERTIFY, that the foregoing is a true copy of the Docket Entries in the above entitled case and that the following are the exhibits in the above entitled case, taken from the record of proceedings of the Circuit Court for Washington County."
>
> Upon review of the documents attached to appellant's motion for reconsideration, it became immediately apparent to the Court that the letter was inaccurate. First, there was not only one audio exhibit in the case. There were at least three audio-only exhibits that were submitted on disc, one other disc that contained both audio and video files, and three other discs containing video files. According to the list of exhibits on MDEC, the record should have contained seven different discs: exhibits 6 (identified on MDEC as "CD- Audio; District Court hearing and certification"), 7 ("CD – Audio"), 9 ("DVD – Video"), 10 ("CD-Audio"), 11 ("DVD – Video"), 12 ("DVD – Video"), and 17 ("CD – Audio").
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> Second, the letter states, "On November 28, 2018 the exhibit was sent to the Court of Special Appeals." The letter does not provide any explanation for the certainty that exhibit 6 was sent to this Court on that date, other than the implication in the previous sentence that exhibit 6 was the only audio exhibit in the case. In fact, as reflected in the record as it has existed in this Court, this Court received six discs from the circuit court clerk's office, labeled as exhibits 7, 9, 10, 11, 12, and 17. (Because this is an MDEC case, the only exhibits that the circuit court needed to transmit physically to this Court were the audio and video files. All hard copy documents were transferred electronically over the MDEC system.).
>
> Third, the letter states, "Enclosed is a copy of the certification of the transmittal of that exhibit." However, the attached certification does not mention exhibit 6 at all. Instead, it is the same transmittal, bearing the same

> date and stamp, that accompanied the docket entries in the case and exhibits 7, 9, 10, 11, 12, and 17.
>
> In light of the obvious errors in the submitted documentation, this Court directed its own Clerk's Office to inquire of the Circuit Court Clerk's Office whether the latter possessed Defense Exhibit #6. The Circuit Court Clerk's Office responded that it did still have possession of the exhibit. This Court then issued an order directing that the exhibit be forwarded to this Court and included in the record. The disc was received on December 20, 2019.
>
> Although it was not this Court's obligation to ensure the completeness of the record, the previously-incomplete record is now complete.

We directed the appellant to obtain a transcript of the rediscovered CD and for the parties to file supplemental briefs addressing the content of the transcript, which they have done.

We reiterate that it was not this Court's obligation to ensure the completeness of the record. That is appellant's obligation. This Court should not be expected in the future to take the laboring oar to track down exhibits that are missing from the record as transmitted to this Court. Nonetheless, because we now possess the previously-missing CD and transcript, we will address the merits of Mr. Caldwell's claim.

B. Any Error in Sustaining the State's Objection Was Harmless.

Mr. Caldwell contends that Agent Toston's testimony at trial regarding the second controlled drug buy was inconsistent with his testimony several months earlier during a proceeding in District Court. Specifically, at trial, during questioning by Mr. Caldwell, Agent Toston testified that another officer saw Mr. Caldwell during that transaction. Agent Toston did not recall having seen Mr. Caldwell himself, and did not say that he recalled the other officer telling him that he had seen Mr. Caldwell, but stated that he knew the other officer had relayed that, because "That's what it says in the report sir."

Mr. Caldwell then summarized Agent Toston's prior testimony:

> Q. Okay, um, aside - - Well, am I correct did you testify on December 14, 2016, to a Sean Mukhergee, um, after Mr. Sean Mukhergee questioned you in the effects of saying none of the officers actually saw Mr. Caldwell. Is that correct? That was the question. You stated, I really can't testify to that sir. I can't testify to what those officers may or may not have seen. I can testify sir that I did not see him. Um, Mr. Sean Mukhergee asks you're the lead investigator officers, is that correct. You said, I am sir. Again, you said, um, well, Sean said and did they report to you in this investigation. You stated, sir, again, I can testify that I don't know that those officers saw Mr. Caldwell on Wayside Avenue or not. I, I can't testify to that.

Agent Toston did not disagree with that description of his prior testimony, stating: "Sir, I am certainly not going to doubt what you may have taken notes on from my testimony over a year ago." After Mr. Caldwell pointed out that the testimony was eight months earlier, not a year, Agent Toston pointed out that his written report on the incident contained different information: "that there was another officer conducting surveillance there that saw you walking, approaching the informant's vehicle." Mr. Caldwell attempted to offer the CD into evidence, but the State objected on grounds that the CD was "outside of the scope," "not properly authenticated," and raised without notice. The court sustained the objection on two grounds. First, the court stated that "the disc, even if properly made by the District Court Clerk is not admissible as substantive evidence in this trial." Second, the court stated, "You've elicited testimony about whether Agent Toston's testimony today is consistent with then. You've made that point. You can argue it later."

Agent Toston's testimony, as transcribed from the CD that Mr. Caldwell attempted to introduce at trial, shows that his description of that testimony was largely accurate:

> Q [by Mr. Caldwell]: And you mentioned that there were officers set up to conduct surveillance, but this occurred in an alley, correct?

A: It did, sir.

Q: And none of the officers actually saw Mr. Caldwell that day; is that correct?

A: I really can't testify to that, sir. I can't testify to what those officers may or may not have seen. I can –

Q: Did they report seeing Mr. Caldwell?

A: I can testify, sir, that I did not see him.

Q: Did they report – well, you're the lead investigative officer, correct?

A: I am, sir.

Q: And did they report to you in this investigation?

A: Sir, again, I can testify that I don't know if those officers saw Mr. Caldwell on Wayside Avenue or not. I can't testify to that.

Mr. Caldwell contends that the circuit court erred in sustaining the State's objection. Focusing on the first ground identified by the circuit court, Mr. Caldwell contends that the court erred in concluding that only a written transcript of Agent Toston's testimony would have been admissible, and not the audio recording. The State agrees, and so do we. Rule 5-802.1(a) does not limit the admissibility of prior inconsistent statements only to written transcripts. The Rule provides:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> (a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; ***or*** (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement;

(emphasis added). To the extent the court's ruling was based on the mistaken belief that Rule 5-802.1(a) applies only to written transcripts of a prior inconsistent statement, it was erroneous.

However, the trial court also concluded that, to the extent Mr. Caldwell's proffer accurately stated the contents of the CD, it would be unnecessarily cumulative. The court stated that Mr. Caldwell had already "elicited testimony about whether Agent Toston's testimony today is consistent with then. You've made that point. You can argue it later." After additional discussion about the absence of a written transcript, the court again stated that "you've already asked him and you've elicited the testimony that I think you were after and so move onto your next topic." And after Mr. Caldwell stated that he "just wanted to show that [he] was truthful," the court responded that it "d[id]n't think the witness has disagreed with you sir."

Although relevant, a judge may exclude evidence to prevent the "needless presentation of cumulative evidence." Md. Rule 5-403; *see Merzbacher v. State*, 346 Md. 391, 414-15 (1997) ("A trial judge always acts within his or her discretion by prohibiting the introduction of relevant but otherwise cumulative evidence." (citing Md. Rule 5-403)). "[C]umulative evidence tends to prove the same point as other evidence presented during the trial." *Potts v. State*, 231 Md. App. 398, 408 (2016) (quoting *Dove v. State*, 415 Md. 727, 744 (2010)). We review a trial court's decision to exclude evidence as cumulative for abuse of discretion. *Ford v. State*, 235 Md. App. 175, 199-200 (2017).

We agree with Mr. Caldwell that the CD of Agent Toston's testimony from the District Court proceeding was not cumulative of *evidence* the court had already received.

Although the State observes accurately that Agent Toston did not disagree with Mr. Caldwell's recitation of his earlier testimony, the agent also did not agree expressly with that recitation. Instead, Agent Toston professed not to recall his earlier testimony, which was quite understandable given that (1) the testimony had been given several months earlier and (2) the gist of the prior testimony was that Agent Toston did not know what other agents may or may not have seen. And, of course, Mr. Caldwell's questions were not themselves testimony. As a result, without the CD reflecting Agent Toston's actual testimony, the court had not received any evidence that Agent Toston had, in fact, testified as Mr. Caldwell claimed he had. The court may have thought Mr. Caldwell had made his point—and perhaps he had—but the testimony was not cumulative of evidence in the record.

On appeal, the State raises an alternative ground, not argued by the prosecutor or relied on by the circuit court, for sustaining the State's objection to introduction of the CD, which is that Agent Toston's testimony before the District Court was not actually inconsistent with his testimony at trial, and therefore could not have been admitted under the hearsay exception applicable to a prior inconsistent statement. The State contends that the two statements are not inconsistent because, on both occasions, Agent Toston disclaimed personal knowledge of whether another agent had seen Mr. Caldwell that day. However, at the District Court hearing Agent Toston testified that he did not know whether another officer had seen Mr. Caldwell and in his trial testimony he testified that, based on his review of his report, he knew that another officer had.

It is unnecessary for us to resolve whether the court could have sustained the State's objection on this ground, because we agree with the State that even if the court erred in sustaining the State's objection, the error was harmless beyond a reasonable doubt. "[A]n error is harmless if a reviewing court can say, after an independent review of the record, that beyond a reasonable doubt, the error in no way influenced the verdict." *State v. Heath*, 464 Md. 445, 458 (2019) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). "The standard for determining whether error was harmless is whether we are 'satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.'" *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey*, 276 Md. at 659). "In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence." *Dove*, 415 Md. at 743.

Mr. Caldwell contends that any error was not harmless beyond a reasonable doubt because Agent Toston's credibility was critical to the case against him and evidence that he gave inconsistent testimony might have caused the jury to question his credibility. We disagree. First, any inconsistency in the testimony was minor. Agent Toston did not testify on either occasion that he had personal knowledge that Mr. Caldwell was seen at the scene of the second controlled buy. The sole difference in the testimony was Agent Toston's statement that his prior written report identified that another agent had reported seeing Mr. Caldwell. That difference does not implicate Agent Toston's own recollection of events.

Second, the trial testimony that Mr. Caldwell asserted was inconsistent with the earlier testimony was not important to the State's case. Indeed, it was Mr. Caldwell, not

the prosecutor, who elicited from Agent Toston the testimony that another officer had seen Mr. Caldwell during the second controlled drug buy, and it was also Mr. Caldwell who sought to introduce Agent Toston's written report to that effect. If not for Mr. Caldwell's questions, that evidence would not have come out at all. Moreover, only Mr. Caldwell identified Agent Toston's testimony during closing argument. The State's evidence that Mr. Caldwell was the seller consisted of the testimony of the confidential informant, testimony about how all three controlled buys were set up and took place, and identification of Mr. Caldwell's presence during the other buys, including eyewitness and video evidence.

Third, as discussed above, the jury heard Mr. Caldwell's account of Agent Toston's earlier testimony (albeit in the form of questions to Agent Toston), Agent Toston's reaction to that account, and the court's statements that Agent Toston had not disagreed with Mr. Caldwell's account and that Mr. Caldwell had made his point. Mr. Caldwell then emphasized that point repeatedly in his closing argument. Thus, although Mr. Caldwell's account of the contents of the CD was not evidence, it was placed squarely before the jury and was not disputed.

In sum, the totality of the evidence against Mr. Caldwell was strong, the marginal value of the evidence on the CD was negligible, and we are convinced beyond a reasonable doubt that there is "no reasonable possibility" that the exclusion of the CD containing Agent Toston's testimony from the District Court proceeding "may have contributed to the rendition of the guilty verdict." *See Dionas*, 436 Md. at 108. Any error by the court in

sustaining the State's objection to the introduction of the CD containing that testimony was therefore harmless.

II. THE COURT DID NOT ERR IN POSTPONING MR. CALDWELL'S TRIAL BEYOND THE *HICKS* DATE.

Section 6-103(a) of the Criminal Procedure Article[5] and Rule 4-271(a)[6] establish a 180-day time period within which criminal cases in circuit court must be tried. In *State v. Hicks*, the Court of Appeals held that the time period is "mandatory," such that, absent good cause to justify a postponement, "dismissal of the criminal charges is the appropriate sanction where the State fails to bring the case to trial within the [ ] period prescribed by the rule."[7] 285 Md. 310, 318 (1979). The "*Hicks* date" is the date on which the 180-day period expires.

"[T]he *Hicks* rule serves as a means of protecting society's interest in the efficient administration of justice. The actual or apparent benefits [that] § 6-103 and Rule 4-271

[5] Section 6-103(a) of the Criminal Procedure Article provides that a criminal defendant's "trial date may not be later than 180 days after the earlier of" (i) "the appearance of [the defendant's] counsel" or (ii) "the first appearance of the defendant before the circuit court." Md. Code. Ann., Crim. Proc. § 6-103(a)(1)-(2) (Repl. 2018).

[6] Rule 4-271(a)(1) provides: "The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 [(Initial Appearance of Defendant)], and shall be not later than 180 days after the earlier of those events." Md. Rule 4-271(a)(1).

[7] At the time *Hicks* was decided, the predecessors to the current § 6-103 and Rule 4-271 imposed a 120-day time period and required "extraordinary cause" for a postponement. *Hicks*, 285 Md. at 318. As a result of later amendments, the statute and the rule currently "prescribe a 180-day period, rather than a 120-day period, for the trial of all criminal cases" and require "good cause," instead of "extraordinary cause," to postpone past that. *State v. Frazier*, 298 Md. 422, 470-71 (1984).

confer upon criminal defendants are purely incidental." *State v. Price*, 385 Md. 261, 278 (2005) (internal brackets omitted) (quoting *Dorsey v. State*, 349 Md. 688, 701 (1998)). "In other words, unlike the Sixth Amendment speedy trial guarantee, the *Hicks* rule is a statement of public policy, not a source of individual rights." *Choate v. State*, 214 Md. App. 118, 140 (2013).

A. The Court Did Not Err in Finding Good Cause to Grant the Postponement.

The State's proffered reason for postponing the case was to secure Agent Mills's appearance as a witness in light of a training class he had been scheduled to attend in Quantico, Virginia on the same date as the trial. Mr. Caldwell argues that this reason did not constitute good cause for postponing trial past the *Hicks* date because the training was elective and the State could and should have raised the conflict earlier. As a result, he contends, the court erred in granting the postponement. The State responds that the court properly exercised its discretion in finding good cause for the postponement. We agree with the State.

"The decision whether to grant a request for continuance is committed to the sound discretion of the court," *Abeokuto v. State*, 391 Md. 289, 329 (2006), and "will not be disturbed on appeal absent an abuse of that discretion," *Cottman v. State*, 165 Md. App. 679, 688, *vacated on other grounds*, 395 Md. 729 (2006). We "may not reverse an administrative judge's finding of good cause for postponement unless the defendant demonstrates clear abuse of discretion or a lack of good cause as matter of law." *State v. Toney*, 315 Md. 122, 131 (1989). "The determination that there was or was not good cause

for the postponement of a criminal trial has traditionally been viewed as a discretionary matter, rarely subject to reversal upon review." *Frazier*, 298 Md. at 451.

The requirement of good cause may be "satisfied when it is established that a necessary witness is unavailable." *State v. Farinholt*, 54 Md. App. 124, 134, *aff'd*, 299 Md. 32 (1984); *see also Choate*, 214 Md. App. at 139-40 (affirming the court's good cause determination "based on the State's representations that a DNA analyst would be unavailable to testify" and because of the prosecutor's scheduling conflict); *Marks v. State*, 84 Md. App. 269, 278 (1990) ("This Court has held that good cause exists to extend a trial when a witness is unavailable."). Here, Agent Mills was a necessary witness due to his significant role in the investigation, including his confrontation with Mr. Caldwell during the third drug buy. After learning that Agent Mills would be unavailable, the State requested that the trial be postponed to "the soonest available trial date." We conclude that the court acted within its discretion in finding that the State's reason for its request—to secure attendance of a necessary witness—amounted to good cause. *See Toney*, 315 Md. at 133 (observing that the General Assembly "intended that good cause be defined by" a court "upon review of the particular circumstances of each case").

Mr. Caldwell emphasizes the elective nature of Agent Mills's training and contends that the State should have raised the issue earlier, but neither argument undermines the court's good cause determination. A moving party is not required to show it exercised "reasonable diligence" to avoid a postponement. *Id.* Even assuming that the State could have informed the court of the conflict earlier, we are not persuaded that the court abused its discretion in finding good cause at the time of the State's request. *See Dalton v. State*,

87 Md. App. 673, 682 (1991) ("The good cause determination carries a heavy presumption of validity."). And the elective nature of Agent Mills's training does not necessarily undermine either its importance or the degree to which Agent Mills was rendered unavailable. In assessing whether the State presented good cause, the court could have taken into account that Agent Mills's training was elective, but Mr. Caldwell has not persuaded us that we should second-guess the circuit court's determination on that basis.

We further conclude that there was no "inordinate delay between the time of the good cause postponement and the trial date" that would require dismissal of the charges under *Hicks*. *See State v. Parker*, 347 Md. 533, 540 (1995). "[W]hen deciding whether to dismiss a case for inordinate delay, it is the length of the delay between the postponed trial date and the rescheduled date that is significant." *State v. Brown*, 355 Md. 89, 109 (1999). "The critical order . . . , for purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days." *Frazier*, 298 Md. at 428. Here, the critical order was that of March 16, 2018, which extended the March 22 trial date past the April 3 *Hicks* date. The rescheduled trial date of May 17 was less than two months after the postponed trial date. Mr. Caldwell has not established that this delay shows any "clear abuse of discretion . . . as a matter of law." *Choate*, 214 Md. App. at 139 (quoting *Frazier*, 298 Md. at 424) (affirming the court's decision to postpone trial 119 days for good cause shown).

B. Mr. Caldwell Has Not Preserved His Claim that the Court Erred in Ruling on the Postponement Request Before Hearing His Opposition.

Beyond his substantive disagreement with the circuit court's postponement decision, Mr. Caldwell also complains that the court erred by granting the motion before "affording [him] a meaningful chance to respond to and oppose" the State's motion. The State again asserts that Mr. Caldwell has failed to preserve his argument, and we again agree.

"Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). A party "representing himself *pro se* does not alter the requirements for preserving an objection for appellate review." *Gantt v. State*, 241 Md. App. 276, 302 (2019). "[T]he procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear *pro se*." *Id.* (emphasis removed) (quoting *Tretick v. Layman*, 95 Md. App. 62, 86 (1993)).

Before the circuit court, Mr. Caldwell challenged that court's ruling on the motion to postpone, but never did so based on the court's having granted the motion without giving him the opportunity to respond. In a motion to dismiss filed more than a month after the court's ruling, and again in an oral motion to dismiss before the start of trial, Mr. Caldwell argued that the court abused its discretion in finding good cause for the postponement. He did not, however, challenge the timing of that ruling or assert that he was not given a chance to be heard. By failing to raise his argument in the circuit court, Mr. Caldwell deprived that court of the opportunity to address it and also neglected to preserve it for our review.

III. THE CIRCUIT COURT DID NOT ERR IN DELAYING RULING ON MR. CALDWELL'S REQUEST TO DISCHARGE HIS COUNSEL UNTIL COUNSEL WAS PRESENT.

Mr. Caldwell argues that the circuit court erred in two respects at his January 9 hearing: (1) in not allowing him to discharge his counsel; and (2) in granting the State's request for a continuance. We disagree with both contentions.

A. The Court Did Not Err in Delaying Consideration of the Request to Discharge Counsel.

Mr. Caldwell argues that the court erred in not allowing him to discharge his counsel during the January 9 hearing even though his counsel, Mr. Tamm, was not present at that time.[8] Rule 4-215(e), which governs waiver of counsel, provides in relevant part:

> If a defendant requests permission to discharge an attorney . . . , the court shall permit the defendant to explain the reasons for the request. . . . If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

Md. Rule 4-215(e). "The provisions of the rule are mandatory and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010) (quotation marks and citation omitted).

We review a court's compliance with Rule 4-215 without deference, *State v. Graves*, 447 Md. 230, 240 (2016), and review its decision to grant or deny a defendant's request to discharge counsel for abuse of discretion, *State v. Taylor*, 431 Md. 615, 630 (2013); *see*

[8] Mr. Caldwell had expressed a desire to discharge his counsel as early as November 3, 2017, in a note filed with the Clerk of the circuit court. The hearing on January 9 was his first court appearance after that filing.

also Mitchell v. State, 337 Md. 509, 516 (1995) (stating that the trial court must make "such an inquiry as is required to permit it to exercise the discretion required by the rule"). "Applying Rule 4-215 to the infinite *ad hoc* situations that inevitably arise . . . has to be entrusted to the wide discretion of the trial judge." *Felder v. State*, 106 Md. App. 642, 651 (1995).

At the January 9 hearing, Mr. Caldwell informed the court that he wanted to discharge Mr. Tamm, that he was ready to begin his trial, and that he wished to represent himself. The court declined to rule on Mr. Caldwell's request because Mr. Tamm was not present, but the court advised Mr. Caldwell that he could raise the request at the next court date. That opportunity came on February 8, when the court allowed Mr. Caldwell, with Mr. Tamm present, to explain why he wanted to discharge his counsel. After hearing Mr. Caldwell's explanation and allowing Mr. Tamm the opportunity to respond, the court permitted Mr. Caldwell to discharge Mr. Tamm and proceed pro se.

We discern no error in the court's decision to postpone consideration of Mr. Caldwell's request until the court was able to hear from Mr. Tamm. Rule 4-215(e) does not require an immediate ruling on a motion to discharge counsel, and the court was justified in waiting to hear from Mr. Tamm before determining whether there was a "meritorious reason for [Mr. Caldwell's] request" to discharge him. The court then decided the motion—in Mr. Caldwell's favor—at its next opportunity.

B. The Court Did Not Err in Continuing Mr. Caldwell's Trial.

After postponing consideration of the motion to discharge counsel, the circuit court also continued the case. Mr. Caldwell contends that the court erred in doing so in light of his stated desire to proceed with trial on that date. We disagree.

We "review[] for abuse of discretion a trial court's ruling on a motion to postpone." *Howard v. State*, 440 Md. 427, 441 (2014). "On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." Md. Rule 2-508(a). Although the Court of Appeals has declined to define the phrase "as justice may require," it has held "that the decision to grant a continuance lies within the sound discretion of the trial judge." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006); *cf. Jones v. State*, 403 Md. 267, 293 (2008) (noting that the similar phrase "'in the interest of justice' grants wide discretion"). Here, the circuit court expressed three reasons for continuing the case: (1) the court wanted Mr. Caldwell's attorney to respond to the allegations of ineffective assistance before ruling on the motion to discharge; (2) the State did not have witnesses available, having been told in advance by the absent Mr. Tamm that he did not intend to proceed to trial that day; and (3) no jury was available. In light of the discretion that circuit court judges are afforded in deciding whether to grant or deny a continuance, and in the absence of any hint of prejudice, any one of these reasons would suffice to affirm the court's decision. We discern no abuse of discretion.

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