UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0122

September Term, 2015

ANTOINE BELIZAIRE, JR.

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Woodward, J.

Filed: December 8, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Antoine Belizaire, Jr., was convicted by a jury in the Circuit Court for Wicomico County, Maryland, of possession of heroin-large amount, possession with intent to distribute heroin, possession with intent to distribute cocaine, possession of a firearm in relation to a drug trafficking crime, possession of a firearm by a prohibited person, illegal possession of a regulated firearm, illegal possession of ammunition, possession of a firearm, possession of heroin, and possession of cocaine. Appellant was sentenced to sixteen years, ten mandatory, for possession of heroin-large amount, a concurrent sentence of sixteen years for possession with intent to distribute heroin, a consecutive sentence of twelve years, five mandatory, for possession of a firearm in relation to a drug trafficking crime, and a concurrent sentence of twelve years, five mandatory, for possession of a firearm by a prohibited person, with the remaining counts merged. Appellant timely appealed and presents the following questions for our review:

> 1. Did the trial court err in allowing a state witness to opine as to the credibility of the testifying officers?
>
> 2. Did the trial court err in finding that Appellant's reasons for discharging counsel were not meritorious?

For the following reasons, we shall affirm.

BACKGROUND

On April 22nd, 2014, Officer Kevin Larkin, of the Salisbury Police Department and the Maryland State Apprehension Team, was assigned to look for appellant in order to serve an arrest warrant. Officer Larkin conducted some investigation and learned that appellant was associated with Demetria Howard, an individual that lived in Hebron,

Maryland. On this day, at approximately 10:45 a.m., Officer Larkin went to Howard's address and saw her driving a 2007 Mercury Mountaineer. A man matching the physical description of appellant was seated in the front passenger seat.

Believing this man to be appellant, Officer Larkin requested that other police officers stop the vehicle. Trooper Richard Hagel, of the Maryland State Police, accompanied by Trooper Kenneth Moore, attempted to stop the Mountaineer at Larkin's request. But, even after activating his emergency equipment, the Mountaineer continued without stopping. Trooper Hagel, Officer Larkin, and other police vehicles pursued the Mountaineer until it came to a stop near Seminole Boulevard and Mohawk Avenue in Salisbury, Maryland.

At that point, the front seat passenger, positively identified as appellant by the police officers, exited the Mountaineer and attempted to flee the area. As he did so, appellant was clutching a brown object in his hand, up against his torso, as if he were carrying a football. During the ensuing foot pursuit, appellant tripped and fell, and then discarded the brown object. Officer Larkin testified that he actually saw appellant toss the brown object.

A few seconds later, appellant was apprehended no more than fifteen feet from where the object had been discarded. Officer Larkin testified that the brown object in question was a brown, camouflage Orioles baseball hat, containing baggies of suspected heroin and crack cocaine, as well as a loaded, silver and black, Ruger semiautomatic handgun. The substances recovered tested positive and measured a total gross weight of 40.32 grams of heroin and a total net weight of .67 grams of cocaine.

Appellant's primary issue on appeal concerns the trial testimony of Maryland State Police Sergeant Michael Daugherty, accepted as an expert in narcotics valuation, identification, investigations, and the common practices of users and dealers of controlled dangerous substances. Sergeant Daugherty reviewed the documents in connection with this case, as well as attended the trial and heard all the testimony. Based on his training, knowledge and experience, as well as the facts of this case, Sergeant Daugherty opined that these facts were consistent with street-level distribution of heroin and cocaine. According to Sergeant Daugherty, the 40.32 grams of heroin had a street value of approximately $16,000.00 and the .67 grams of cocaine had a street value of approximately $110.00.

We shall include additional facts detail in the discussion that follows.

DISCUSSION

I.

Appellant first contends the trial court erred by permitting Sergeant Daugherty to offer an opinion concerning the credibility of the arresting police officers who testified at trial, and erred in denying his motion for mistrial. The State responds that this issue was not adequately preserved for our review and that, in any event, the trial court properly exercised its discretion, because (1) the rules of evidence permit rehabilitation of a witness's reputation for truthfulness, and (2) because appellant was not prejudiced by the testimony at issue.

Appellant, proceeding *pro se* at his trial, cross-examined Sergeant Daugherty as follows:

[APPELLANT]:	Have you ever, in your life that you been a police officer, have you ever found any officer lying in statements or plant evidence?
[PROSECUTOR]:	Objection.
[APPELLANT]:	Because you talking about this . . .
THE COURT:	I'll allow him to answer it, if he can.
[SGT. DAUGHERTY]:	Can you ask it again?
[APPELLANT]:	Since you been a police officer here in Wicomico County have you ever met any crooked officers who plant evidence and sabotage crime scenes?
[SGT. DAUGHERTY]:	I have not met an officer that sabotaged crime scenes. In reference to an officer that had integrity problems, yes, I have.
[APPELLANT]:	And would they do, the officers that you met with those integrity problems, some of them still on the force maybe, would you say?
[SGT. DAUGHERTY]:	That's not correct.
[PROSECUTOR]:	Objection.
THE COURT:	Sustained.
[APPELLANT]:	But in all your history, you ain't never met crooked cops in –
[SGT. DAUGHERTY]:	The officer –
[APPELLANT]:	– in Wicomico County?

[SGT. DAUGHERTY]:	– the officer was arrested and fired, the one that I know of.

Prior to redirect examination, the prosecutor asked to approach the bench and the following ensued:

[PROSECUTOR]:	Your Honor, [appellant] has inserted the credibility of the officers, has asked him about the credibility of the officers in general, and his specific intent was to call into question the credibility of these specific officers today. It's my intent at this point to elicit from the witness his opinion of the credibility of the officers who have appeared as a witness today, and I just want to put that forward so if there is an objection we can do it outside the hearing of the jury.
THE COURT:	Okay. You want to suggest that the officers in question have integrity problems, right?
[APPELLANT]:	I know they do.
THE COURT:	Yes, okay. But I agree that he's opened the –
[APPELLANT]:	He knows they do.
THE COURT:	Well, he's going to ask the question. The State's Attorney now would like to ask the question whether he is familiar with the officers and whether in his opinion they have integrity issues. I believe you have opened the door to that question, and I'm going to let him do so.

The prosecutor then conducted redirect examination of Sergeant Daugherty as follows:

[PROSECUTOR]:	Detective, [appellant] asked you about the integrity of police officers.
[SGT. DAUGHERTY]:	That's correct.
[PROSECUTOR]:	You were witness to all of the events and testimony today; is that correct?
[SGT. DAUGHERTY]:	Yes, I was.
[PROSECUTOR]:	Did you witness the testimony of the three officers who testified today?
[SGT. DAUGHERTY]:	Yes I did.
[PROSECUTOR]:	And do you have, based upon your experience in law enforcement and your experiences with them, do you have an opinion or have you been able to get an opinion as to their credibility?
[SGT. DAUGHERTY]:	I would not, I would not have those officers around me if I questioned their credibility. Their credibility remains intact, and I believe what they said here today is factual.
[PROSECUTOR]:	Nothing further.
[APPELLANT]:	Objection.
THE COURT:	All right. Do you have any other questions?
[APPELLANT]:	He said he believed. Do you know?

THE COURT:	All right. Ladies and gentlemen of the jury, disregard whether the officer believes the testimony that they gave today, but I will permit the officer's opinion that he believes their credibility generally to be intact.

Appellant then conducted the following recross-examination of Sergeant Daugherty:

[APPELLANT]:	I mean, what makes you say that, what, you worked with some of those officers that testified today or something?
[SGT. DAUGHERTY]:	I have –
[APPELLANT]:	And that's why you backed them when you said that, what you said? Have you ever worked with any of them?
[SGT. DAUGHERTY]:	Yes, I have.
[APPELLANT]:	Oh, so that's why you said it.
[SGT. DAUGHERTY]:	That's not why I'm saying it. I've worked with other officers that, that have been fired in the past, so if I'm up here saying that their integrity is the utmost, then that's exactly what I'm telling you.
[APPELLANT]:	You entitled to your opinion.

The next day, prior to reception of any further evidence, appellant asked for a mistrial based on Sergeant Daugherty's earlier testimony. We cite the full colloquy here:

[APPELLANT]:	Oh, I got one more, all right, the expert witness you all had in here the other day, right?
THE COURT:	Yesterday.
[APPELLANT]:	Yesterday. Yeah, his, as far as his testimony it's biased in the whole whatchamacallit, because he testified that he knows those officers and said that they wouldn't, basically they're not capable of framing.
THE COURT:	That's not what he said.
[APPELLANT]:	Yeah, in so many words, if you look at it and check it out.
THE COURT:	I listened to it.
[APPELLANT]:	We got an objection to it, that's what he said, he said, um . . .
THE COURT:	That's not what he said.
[APPELLANT]:	What did he say then?
THE COURT:	You heard what he said, I'm not going to repeat the testimony. I'm calling for the jury.
[APPELLANT]:	He –
THE COURT:	Okay, so what are you asking for, sir?
[APPELLANT]:	I want his, his expert testimony struck or a mistrial or something, because he said something that he wasn't supposed to say.
THE COURT:	Okay.

[APPELLANT]:	That wasn't right. In front of those jurors. And nobody never said that, if he was their partner or if he worked in their agency or none of that, when he, there's no notes or nothing coming from him.
THE COURT:	You're –
[APPELLANT]:	Yeah, because all, I'm allowed to have, I got discovery for everything, for background checks, credibilities, you brought an officer in here that, for an expert witness is the officer's partners.
THE COURT:	All right, any –
[APPELLANT]:	And he made a statement.
THE COURT:	Anything else?
[APPELLANT]:	And you allowed it.
THE COURT:	I did allow some of his statement, yes.
[APPELLANT]:	Yeah, but he said a few things.
THE COURT:	All right. Well, your request is noted. Do you wish to respond to it?
[PROSECUTOR]:	Well, it sounds, and it's hard to decipher a little bit, but it sounds as though [appellant] has asked the Court for a mistrial based upon the fact that the trooper who is the expert, the State's expert, knows and has worked with the officers prior –
[APPELLANT]:	And admitted it.

[PROSECUTOR]:	– and that that leads to a bias in his testimony, it sounds like that is the basis for his request. I would note that if that is in fact the basis of his request and the request that he's making, that all of that would not be proper grounds for a mistrial, but it would be excellent argument perhaps to the jury at the time for argument. So, if [Appellant] wishes to articulate that to the jury in argument, he is certainly entitled to do so.
THE COURT:	I agree.
[APPELLANT]:	No, he said, he not saying what he said, the statement he made. You objected, but they heard what he said, he said that they didn't plant nothing.
THE COURT:	That's not what he said.
[APPELLANT]:	He did.
THE COURT:	All right.
[APPELLANT]:	How –
THE COURT:	I've heard your motion. The motion is denied. You may argue to the jury that they should disbelieve the expert's testimony, that's permissible. I ordered that the jury disregard any statement by the expert which is proper [sic], I am permitted to instruct them to disregard testimony, just like I'm instructed to, to disregard other evidence that they shouldn't consider.

[APPELLANT]:	So I can make all my accusations at them, that's what you saying? From there?
THE COURT:	That's not what I'm saying, sir. What I'm saying is that, we're going to call for the jury.
[APPELLANT]:	Yeah, but I'm saying I'm allowed to say in my closing –
THE COURT:	Call for the jury.
[APPELLANT]:	– call 'em –
THE COURT:	Call for the jury.
[APPELLANT]:	– I'm gonna say what I gotta say.
THE COURT:	I can't give you advice. You're going to say what you're going to say.
[APPELLANT]:	I don't want no advice, no more advice, thank you. You told me. At the last minute. Thank you. I'm not tripping about, about this at all. Might don't win today but I'll win eventually.

Maryland Rule 8-131 (a) provides, in pertinent part:

> 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, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The purposes of Rule 8-131 are:

> "'(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to

> prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.'"

Fitzgerald v. State, 384 Md. 484, 505 (2004) (quoting *County Council v. Offen*, 334 Md. 499, 509 (1994)); *accord Md. State Bd. of Elections v. Libertarian Party of Md.*, 426 Md. 488, 517 (2012).

The State offers a number of reasons why this issue was not properly preserved. Foremost among them is that appellant did not offer a timely objection before Sergeant Daugherty offered his opinion. The Court of Appeals has explained that "it is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *see also* Md. Rule 4-323 (a) (requiring a timely objection when evidence offered). As this Court also has underscored, "'if opposing counsel's question is formed improperly or calls for an inadmissible answer, counsel must object immediately.'" *Fowlkes v. State*, 117 Md. App. 573, 587 (1997) (quoting *Bruce v. State*, 328 Md. 594, 627-28 (1992)), *cert. denied*, 348 Md. 523 (1998); *see also Prince v. State*, 216 Md. App. 178, 194 ("[T]he objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time . . ."), *cert. denied*, 438 Md. 741 (2014).

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

[Prosecutor]:	Did you tell the police officers that Miss Jones could vouch for your whereabouts?
[Appellant]:	No, I haven't. I told my lawyer.
[Prosecutor]:	Did you tell the State's Attorney's Office?
[Appellant]:	No.
[Defense Counsel]:	Objection, Your Honor; the defendant has no necessity of talking to the police or the State.
The Court:	I realize that. The objection is overruled.

Id. at 716-17.

We observed that appellant failed to object after the first question on the subject was asked and failed to timely object after the second question was asked. *Id.* at 717. We then cited *Bruce v. State*, 328 Md. at 628-29, noting "the preservation requirements for this sort of objection are very strict," and that "if the objectionable nature of the question is clear, the objection must be immediately forthcoming before the answer is given." *Williams*, 99 Md. App. at 717. Further:

> In the *Bruce v. State* case itself, it was held that defense counsel should have spotted immediately that the question was objectionable. The failure to make an immediate objection, therefore, was deemed to be a waiver of the objection. As Judge Chasanow explained, 328 Md. at 629:
>
>> The question in the instant case, then, is whether or not Bruce's counsel could or should have known from the question that the answer would be objectionable. We believe that *Bruce's counsel should have been able to*

> *anticipate the type of answer called for by the question and thus should have been able to perceive grounds for an objection as soon as the question was asked -- before the answer.* (emphasis supplied).

Id. at 718.

Here, after the State was granted permission by the trial court to ask the witness about the credibility of the other witnesses, in order to respond to appellant's earlier questions suggesting that Wicomico County Police officers lied and planted evidence, appellant did not timely object after the State's question and before Sergeant Daugherty's response. Clearly, appellant was on notice that such a question was coming and it was incumbent for him to place his objection on the record prior to the response in order to preserve his challenge to that evidence. *See Grandison v. State*, 341 Md. 175, 195 (1995) ("[W]e have long held that a defendant in a criminal case who chooses to represent himself is subject to the same rules regarding reviewability and waiver of questions not raised at trial as one who is represented by counsel."), *cert. denied*, 519 U.S. 1027 (1996).

Moreover, it is arguable that the grounds raised on appeal are different from those asserted at trial. On appeal, appellant asserts that the court erred because, even with a limiting instruction, it allowed "the jury to consider [Sergeant Daugherty's] opinion that their credibility was 'generally intact'" and "[t]hat statement in and of itself served the exact same purpose: to convey that the other officers were telling the jury the truth at trial, because they were known, personally by this detective, [to] be very honest people." Thus, the essence of appellant's claim is that Sergeant Daugherty offered an inadmissible opinion as to the arresting officers' credibility relating to the facts of this specific case.

In contrast, when appellant was asked to explain his grounds for his motion for mistrial the next day, appellant asserted that Sergeant Daugherty was biased in favor of the State's witnesses, arguing that the expert opined that these officers "didn't plant nothing." Not only did the trial court disagree with appellant's characterization of the challenged testimony, but, to the extent that these grounds differ from the ones raised on appeal, we agree with the State that the issue has not been properly preserved for our review. *See Gutierrez v. State*, 423 Md. 476, 488 (2011) (reiterating that, "'when an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified'") (citation omitted).[1]

In any event, even were we to overlook appellant's untimely objection at trial and the grounds asserted during argument on the motion for mistrial, we are not persuaded that the trial court abused its discretion in overruling the objection or in denying the motion. "'[A] mistrial is generally an extraordinary remedy and [] under most circumstances, the trial judge has considerable discretion regarding when to invoke it.'" *Whack v. State*, 433 Md. 728, 751-52 (2013) (quoting *Powell v. State*, 406 Md. 679, 694 (2008)). "'Ordinarily,

[1] The State raises several other reasons why this issue is not preserved, but our conclusion that the objection was untimely and arguably based on different grounds makes it unnecessary to discuss those alternative rationales. *See generally, Bowman Grp. v. Moser*, 112 Md. App. 694, 702 (1996) (where relief granted on primary argument, appellate court may decline to rule on the merits of an alternative argument). Further, we simply note that the State's "harmless error" argument is primarily a continuation of its waiver rationale and thus we need not consider that argument either. *See Decker v. State*, 408 Md. 631, 649 n.4 (2009) ("Because we have decided that the trial court properly admitted the evidence, we do not need to address the State's argument that the admission of the evidence was harmless.").

the exercise of that discretion will not be disturbed upon appeal absent a showing of prejudice to the accused, and [i]n order to warrant a mistrial, the prejudice to the accused must be real and substantial.'" *Wagner v. State*, 213 Md. App. 419, 462 (2013) (citation and internal quotation marks omitted). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594-95 (1989)).

The challenged testimony from Sergeant Daugherty was "I would not, I would not have those officers around me if I questioned their credibility. Their credibility remains intact, and I believe what they said here today is factual." In response, the court gave the following limiting instruction: "Ladies and gentlemen of the jury, disregard whether the officer believes the testimony that they gave today, but I will permit the officer's opinion that he believes their credibility generally to be intact."

In *Bohnert v. State*, 312 Md. 266 (1988), the Court of Appeals stated: "[i]t is the settled law of this State that a witness, expert or otherwise, may not give an opinion on whether he believes a witness is telling the truth. Testimony from a witness relating to the credibility of another witness is to be rejected as a matter of law." *Id.* at 278. Indeed, "[i]t is ... error, as a matter of law, for the [trial] court to permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying." *Tyner v. State*, 417 Md. 611, 617 (2011) (quoting *Bohnert*, 312 Md. at 277) (internal quotation marks omitted). This is because weighing the credibility of witnesses is always

a matter for the finder of fact. *See Calloway v. State*, 414 Md. 616, 635 (2010) (stating that credibility to be resolved by trier of fact).

Simply put, Sergeant Daugherty's testimony that he believed the testimony of the arresting officers in this case was inadmissible as a matter of law. The trial court recognized this by its limiting instruction, and as is well settled, the jury is presumed to follow the court's instructions in reaching its verdict. *See Alston v. State*, 414 Md. 92, 108 (2010) ("As this Court has often recognized, 'our legal system necessarily proceeds upon the assumption that jurors will follow the trial judge's instructions.'") (citation omitted).

The trial court only admitted Sergeant Daugherty's testimony that the witnesses' "credibility remains intact[.]" As the State argues on appeal, it is apparent that such testimony was properly admissible as evidence of the witnesses' reputation for truthfulness. Maryland Rule 5-608(a)(2) provides that, "[a]fter the character for truthfulness of a witness has been attacked, a character witness may testify (A) that the witness has a good reputation for truthfulness or (B) that, in the character witness's opinion, the witness is a truthful person." The Court of Appeals has noted that, under this Rule, "[A]ll witnesses, including criminal defendants, may be rehabilitated with their good character for truthfulness after their character for truthfulness has been attacked." *Sahin v. State*, 337 Md. 304, 313 (1995).

Appellant's challenge to the credibility of the arresting officers began with his opening statement. There, appellant stated:

> I'm here to prove my innocence in the case against the, um, the officers is lying and trying to frame me. And they charged me and

> my girlfriend with something that is not ours. And I can prove it in the statements and everything that was done at the time, the misleading, the new statements that pop up, and everything that happened, that they made this stuff up for some ulterior motive. And the State is trying to cover it up, cover it up for 'em, and I'm gonna prove it.

This challenge continued during appellant's aforementioned cross-examination of Sergeant Daugherty, in which appellant was suggesting that the arresting officers were "crooked" or had "planted" evidence against him. Despite Sergeant Daugherty's denial of such suggestions, this Court has observed that "[q]uestions alone *can* impeach." *Craig v. State*, 76 Md. App. 250, 292 (1988) (emphasis in original), *rev'd on other grounds*, 316 Md. 551 (1989), *judgment vacated on other grounds*, 497 U.S. 836 (1990); *see also Elmer v. State*, 353 Md. 1, 15 (1999) ("It would be folly to suggest that questions alone cannot impeach.").

Thus the State could respond to appellant's challenges to the credibility of the arresting officers, and the trial court properly limited that response to the general statement that their reputation for truthfulness was "intact." Moreover, we also agree that, even if the limited testimony that the officers' reputation for truthfulness, *i.e.*, their general credibility, was "intact" was inadmissible, appellant opened the door to a response from the State. As this Court has explained, the "open door" doctrine "'is based on principles of fairness and permits a party to introduce evidence that otherwise might not be admissible in order to respond to certain evidence put forth by opposing counsel.'" *Khan v. State*, 213 Md. App. 554, 573 (2013) (quoting *Mitchell v. State*, 408 Md. 368, 388 (2009)).

Accordingly, even if preserved, we are not persuaded that the trial court abused its discretion on this issue.

II.

Appellant also asserts that the trial court erred in ruling that he did not have a meritorious reason to discharge his attorney and should have appointed replacement counsel. The State responds that the court properly exercised its discretion. We agree with the State.

At a pretrial motions hearing, on October 10, 2014, appellant expressed dissatisfaction with his attorney, as follows:

[APPELLANT]:	I don't think I'm being properly represented. At all. I just got all this stuff last week. My understanding in court last week she been had this stuff for a couple months, last – and I still ain't seen everything yet. They bring me two different discoveries, all of it in one, you know what I'm saying? I ain't had enough time to do anything with it. She's not doing anything for me. You know what I mean? I think she's just, they together, like, she just trying to throw me. I don't want her to represent me.
THE COURT:	Okay. Let me ask you some questions, sir.
[APPELLANT]:	She don't want to get stuff suppressed. She don't want to do this and that. She trying to cram this in on me in the day or two before court. Shit ain't working – I mean, excuse

me, I ain't never seen nothing like this before in my life.

The trial court then inquired of defense counsel, and counsel agreed that she had reviewed the discovery in this case, except for some recorded phone calls that were intercepted at the jail while appellant was incarcerated. Counsel stated that she had reviewed discovery with appellant, with the exception of these aforementioned phone calls. Appellant confirmed that he and counsel reviewed "the majority" of the discovery. The State responded that the remaining discovery concerning the phone calls from the jail would be provided.

Defense counsel also informed the court that, based on her review of the facts, including that the contraband was abandoned and simply found on the ground, that appellant did not have standing to challenge its seizure. To the extent that this case may have involved other evidence that was seized from a house, defense counsel also stated that appellant did not live there and thus there would be no legal basis to challenge the search and seizure there. As further explanation for her decision not to seek to suppress evidence in this case, counsel also stated that appellant did not make any statements in connection with this case, other than the phone calls.

The trial court then returned to appellant and asked him if he wanted to hire private counsel, to which appellant replied:

[APPELLANT]: No, I got, I'd rather go in there by myself than go out like this. Or they can find me one that do something, reschedule something or something, because I ain't had time to go over

nothing. For real. And then it's things in there I want suppressed, she's saying that she don't want to do this or that. And we just not . . . it's evidence and different stuff that shouldn't be in there or things of that nature that doesn't add up, and she's not helping me no way with it. We're not getting along at all.

THE COURT: Okay.

[APPELLANT]: I say tomato, she say tomato. I just feel like, you know . . .

Appellant informed the trial court that he could not hire private counsel, but he wanted someone else from the Office of the Public Defender to assume representation. The court then asked appellant, assuming that the Public Defender did not assign another attorney to represent him in this case, whether he wanted to represent himself. Appellant responded, "Not really . . ." On this point, the court inquired of defense counsel as follows:

THE COURT: All right. So if you terminate your appearance today, Counsel –

[DEFENSE COUNSEL]: Yes.

THE COURT: – at his request, what will his options be from the perspective of the Public Defender's Office?

[DEFENSE COUNSEL]: Your Honor, if you find that there is no good cause, he won't have a Public Defender.

THE COURT: And if I were to find that there was good cause?

> [DEFENSE COUNSEL]: Then he would be assigned someone else.

The trial court then found:

> All right. The fact that you disagree with the legal conclusions of your counsel is not good cause in my opinion. So to the extent that you have a legal opinion that is not the same as your counsel, I don't believe that that is good cause for you to terminate your counsel.

Appellant maintained that he was not willing to work with his assigned public defender and wanted to discharge her. After ascertaining that there were still questions about whether appellant had seen all the discovery in this case, the trial court went over the charging documents in order to ensure that appellant was aware of the charges, the maximum penalties and any enhanced penalties that were facing him in connection with this case. Appellant responded to the court's inquiries, indicating that he understood the charges against him.

The trial court then advised appellant of the importance of having a lawyer represent him at every stage of the proceedings. He was also told that, if he appeared without a lawyer, the case would proceed to trial in any event. Appellant indicated that he understood these advisements.

At that point, the trial court noted that appellant had not been provided with all the discovery in this case, and that there was "some merit to your desire to speak further with your counsel." The court also indicated that it would grant a continuance so that appellant could discuss this case and review all of the evidence with his assigned public defender. Appellant was advised that, should he still wish to discharge assigned counsel, the Public

Defender would be unlikely to assign someone else to represent him in this case. The court therefore reserved ruling on appellant's motion until after he had reviewed all the discovery, including transcripts of the recorded phone calls, with presently assigned counsel. The court summarized its ruling:

> It shall reflect that I fully advised the Defendant of his right to counsel and complied with Maryland Rule 4-213 and 4-215, subsection small (a), 1 through 4. And that for today's purposes I'm denying his motion to discharge his counsel, but I'm leaving open that possibility that he may again make that request.
>
> In the meantime I'm ordering the defense attorney of record to provide to him and review with him, so that he and I are sure that all of the discovery that has been provided to him has been reviewed with him and his counsel, and that he still wishes, should that be his desire, to terminate her services if that's the desire.
>
> Or alternatively it may very well be that the Public Defender's Office, the District Public Defender is here, may choose to reassign a lawyer for you, sir. All right. So just keep an open mind and we will see where we stand on the 24th.

At the next hearing, on November 7, 2014, the trial court summarized the aforementioned proceedings, then added that it had received a letter from the District Public Defender. The District Public Defender, who was in court when appellant originally made his request to discharge counsel in this case, responded that she

> was confident that [appellant] is receiving appropriate counseling and representation from his assigned counsel. His attorney, Patricia Harvey, Esquire, has many years of experience and is a very accomplished trial attorney. In addition, Ms. Harvey spent numerous hours reviewing the case with [appellant] at the Wicomico County Detention Center. I do not intend to reassign this matter to other counsel unless this Court finds there is a meritorious reason to discharge Ms. Harvey.

After summarizing the District Public Defender's position in this matter, the trial court ascertained that the State made a plea offer to appellant, but that offer had since expired. Initially, appellant's assigned public defender advised the court, at that time, that she had not spoken to appellant about this plea offer. She had, however, reviewed some, but not all, of the phone calls recorded at the jail with appellant and had asked the State to have them all transcribed. She also informed the court, later in the hearing, that she had met with appellant for an aggregate total of between fifteen to sixteen hours. Appellant confirmed that he had listened to the recordings that were provided.

The trial court then addressed appellant and asked him if he wanted to speak to his still assigned public defender about the State's plea offer, and appellant replied that "[w]e talked about that already. I don't want to talk about that no more." Appellant clearly indicated that he was rejecting the plea offer.

Appellant disagreed with his assigned counsel's assessment of his standing to challenge the legality of the seizure of evidence in this case. Appellant also wanted to "impeach" the witnesses that testified before the Grand Jury and wanted the transcripts from that proceeding. The trial court determined that there were no such transcripts.

Appellant then informed the court that he and his assigned public defender disagreed over several matters of trial strategy. These included, but were not limited to: subpoenaing certain witnesses that were involved with obtaining a plea deal with a codefendant; challenging the existence and the analysis of the narcotics that were recovered in this case; an alleged illegal entry into someone's house by the "Gang Task Force" or the "Narcotics

Task Force;" suppression of a witness's statement following such entry that appellant believed was coerced; and disclosure of the identity of a confidential informant. Despite these disagreements, appellant confirmed that he had met with his assigned public defender prior to trial. After appellant's reasons were placed on the record, the following ensued:

> THE COURT: Well, the question is, do you wish to dismiss her and represent yourself?
>
> [APPELLANT]: If you all can't provide another one for me, yeah, I guess.
>
> THE COURT: So you wish to represent yourself, if the choice is between yourself and Ms. Harvey?
>
> [APPELLANT]: Yeah.

The trial court then responded:

> All right. [Appellant], I don't believe that there is an attorney that is going to be available that's going to satisfy the demands that you have made in terms of what your expectations are, because the attorney has to use their judgment about the law. And the fact that you may disagree with the law does not prevent them from reaching legal conclusions that are, that you don't agree with.
>
> So, they're required to use their expertise. Now, Ms. Harvey could put on the record her training and experience and the fact that she's represented many, many people. She's been to law school. She's been doing nothing but felony and serious Circuit Court-level trials as a Public Defender for years now. And I cannot conclude from what you have discussed and the type of issues that you've raised that Ms. Harvey has not provided you with legal representation that is adequate.
>
> What I can conclude is that you disagree with her judgment. And you certainly are entitled to disagree with her judgment if you wish to represent yourself. However, if you were

> to retain her it would be her decision as to which of the lawyers – or which of the known witnesses should be called and for what purpose and which would be beneficial to you.
>
> You certainly have the right to determine important matters like how you plea and whether you have a jury trial or a court trial and other fundamental rights. But when it comes to matters regarding legal conclusions, she is required to use her best legal judgment. And she will not be able to satisfy your demands if your legal judgment and hers are not the same. She is not expected to agree with you.

After further discussion, the trial court granted appellant's request to discharge counsel, as follows:

> I'm satisfied still that Ms. Simpson has thoroughly reviewed, as the District Public Defender, whether the Defendant should be entitled to an alternate or a substitute Public Defender. I have heard from the Defendant. I have considered all of the materials that occurred at the last hearing in front of me that was scheduled for motions and the instant one. I am going to grant the Defendant's request to discharge his counsel. And she and the Public Defender's Office is discharged.
>
> He understood that by discharging Ms. Harvey he was discharging the Office of the Public Defender. I find that it is not a meritorious discharge. It would not be a recommended discharge. But it is his right to discharge her. And so I'm going to permit him to do so.

The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *See Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963).[2] "If the defendant cannot afford private

[2] The right to counsel provisions of the Maryland Declaration of Rights, Article 21 are in *pari materia* with the Sixth Amendment to the federal constitution. *Parren v. State*, 309 Md. 260, 262-3 n.1 (1987).

representation, then he or she is entitled to an effective defense from a public defender or court appointed attorney." *Gonzales v. State*, 408 Md. 515, 529-30 (2009); *see also Dykes v. State*, 444 Md. 642, 648 (2015) (stating that "the defendant has a right to counsel appointed at government expense"). "If the defendant can afford private representation, however, then the defendant has a right to the attorney of his or her choice." *Gonzales*, 408 Md. at 530. In addition, a defendant in a criminal prosecution has a corresponding constitutional right to reject that assistance and represent himself. *See Faretta v. California*, 422 U.S. 806, 814 (1975) (stating that "the Court recognized that the Sixth Amendment right to the assistance of counsel implicitly embodies a 'correlative right to dispense with a lawyer's help'") (citation omitted); *see also Adams v. United States ex rel. McCann,* 317 U.S. 269, 279 (1942) ("[T]he Constitution does not force a lawyer upon a defendant. He may waive his Constitutional right to assistance of counsel if he knows what he is doing and his choice is made with eyes open.").

"As part of the implementation and protection of this fundamental right to counsel," the Court of Appeals "adopted Maryland Rule 4-215, which explicates the method by which the right to counsel may be waived by those defendants wishing to represent themselves . . . ." *Broadwater v. State*, 401 Md. 175, 180 (2007). The requirements of the Rule are "mandatory," require "strict compliance," and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012). "We review *de novo* whether the circuit court complied with Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012). However, so long as the court has strictly

complied with Rule 4-215(e), we review the court's decision regarding whether to grant or deny a defendant's request to discharge counsel for abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013).

Maryland Rule 4-215(e) provides as follows:

> **(e) Discharge of Counsel – Waiver.** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. 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. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Appellant does not contend that the trial court erred in its technical application of the preliminary requirements this Rule. Instead, appellant simply disagrees with the trial court's finding that his reason for wanting to discharge counsel was not "meritorious." The Court of Appeals has suggested that "meritorious" is simply whether there was "good cause" to support the request. *See Dykes*, 444 Md. at 652.

Here, appellant's reasons for wanting to discharge counsel were because (1) there was "a breakdown in communication" between them; (2) he did not "trust his counsel's judgment;" (3) he did not have "confidence in her ability to represent him;" (4) counsel

was trying to "coerce him to take a plea deal;" and (5) counsel would "not share discovery with him in a timely manner and did not take his requests seriously."

Appellant's contentions are similar to the ones that we considered in *Alford v. State*, 202 Md. App. 582 (2011). There, Alford argued that discharge was warranted because, not only was his attorney not competent, but also, his attorney "(1) failed to investigate or call at trial three witnesses appellant had identified; (2) failed to sufficiently communicate with appellant before trial; (3) failed to file motions requested by appellant; and (4) had a poor relationship with him." *Id.* at 607. We upheld the trial court's finding that these were not meritorious reasons for Alford to discharge his attorney. *Id.* at 609-10; see *also Dykes,* 444 Md. at 668 n.16 (noting that appellant's distrust of his attorney was not, *per se*, a meritorious reason for discharge); *State v. Graves*, 447 Md. 230, 243 (2016) (stating that "the circuit court must actually consider the reasons for the request, and make a further inquiry if necessary to determine whether those reasons are meritorious").

We reach the same conclusion in this case. The trial court considered appellant's reasons and found them to be wanting. We also note that, although the "ultimate decision" on how to proceed in a criminal case falls to the defendant, strategic decisions are ordinarily left to the province of the attorney after consultation. *See, e.g.*, *Treece v. State*, 313 Md. 665, 672-74 (1988). Ultimately, we perceive no abuse of discretion in the trial court's finding or ruling on this issue.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.