Circuit Court for Somerset County
Case No. C-19-CR-17-000263

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 203

September Term, 2022

RICHARD ALLEN THURSTON

v.

STATE OF MARYLAND

Reed,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned)

JJ.

Opinion by Sharer, J.

Filed: February 13, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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.

This appeal stems from a retrial in the Circuit Court for Somerset County. After the first trial, a jury convicted appellant, Richard Allen Thurston, of possession of a regulated firearm after a disqualifying conviction, possession of ammunition after a disqualifying conviction, and possession of a handgun in a vehicle. *Thurston v. State*, No. 2889 Sept. Term 2018, 2020 WL 85448, at *1 (Md. App. Jan. 7, 2020). The trial court sentenced Mr. Thurston to a total of ten years in prison, the first five years without the possibility of parole. *Id*. In an unreported opinion, this Court reversed the judgments and remanded for a new trial. *Id*. at *6. In that opinion, this Court determined "that the trial court failed to comply strictly with the mandates of Maryland Rule 4-215 before it permitted appellant to discharge his attorney and proceed *pro se*[.]" *Id*. at *1.

The State retried Mr. Thurston, and a jury again convicted him of possession of a firearm after a disqualifying conviction, possession of ammunition after a disqualifying conviction, and possession of a handgun in a vehicle. The court again sentenced Mr. Thurston to a total of ten years in prison, the first five years without the possibility of parole. Mr. Thurston appeals (with counsel) and presents three questions for our review:

1. Did the motions court err when it failed to comply with Md. Rule 4-215?
2. Did the trial court abuse its discretion by failing to consider Mr. Thurston's reason for seeking to dismiss counsel during trial?
3. Did the motions court err in denying Mr. Thurston's motion to suppress his statements?

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

BACKGROUND

On August 18, 2017, Corporal Benjamin Jones of the Wicomico County Sherriff's Office[1] served an arrest warrant on Mr. Thurston in the parking lot of a bar in Somerset County. Before the arrest, Corporal Jones observed Mr. Thurston driving a single cab, Dodge pickup truck. When arrested, Mr. Thurston was the sole occupant of that vehicle.

Law enforcement searched the vehicle and found a loaded Smith & Wesson .38 caliber revolver inside a FedEx envelope behind the driver's seat. That envelope had Mr. Thurston's name on it. Corporal Matthew Clark test fired the gun and determined it to be operable.

The State introduced recorded jail calls that Mr. Thurston placed from the Wicomico County Detention Center. In one of those jail calls, Mr. Thurston asked another individual to search the truck for contraband:

> MR. THURSTON: When you pick that truck up, you find a place to pull over where there's water and take the tru[c]k there and tow out of it and search it for contraband. Search i[t] really thoroughly for contraband and then get rid of it, if it's in there, and then that's it.
>
> FEMALE VOICE: Okay.

Mr. Thurston followed up on his request in another recorded jail call that was played at trial:

> MR. THURSTON: I asked you to go out there and you searched the truck, right?
>
> FEMALE VOICE: And I did.

[1] Corporal Jones testified that he was deputized as a Task Force Officer with the United States Marshals Service.

MR. THURSTON: And did you take everything out, you know, you know, and look under the seat and everything?

FEMALE VOICE: Yes, I did.

MR. THURSTON: Was there a blue Fedex cardboard envelope?

FEMALE VOICE: A blue Fedex cardboard envelope? No.

MR. THURSTON: There wasn't?

FEMALE VOICE: No, there was not.

During an interview with Corporal Clark and Detective William Oakley, Mr. Thurston stated: "I'm the only one that drives my truck[,]" then added that other people drive it "every once in a while[,]" but he is "usually" with them. The court instructed the jury as to the parties' stipulation: "The Defendant is a prohibited person from possessing a regulated firearm. That is not in dispute and it's considered proven."

We shall supply additional facts in our analysis as needed.

DISCUSSION

I.

At a motions hearing in August 2021, the court denied Mr. Thurston's request to discharge counsel. Mr. Thurston argues that the court erred in failing to allow him the opportunity to explain his reasons for desiring to discharge counsel at that hearing. According to Mr. Thurston, reversal is required because the court failed to comply with Md. Rule 4-215(e).

The Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, and Article 21 of the Maryland Declaration of

Rights "'guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.'" *Broadwater v. State*, 401 Md. 175, 179 (2007) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). The accused in a criminal prosecution "has both the right to have the assistance of counsel and the right to defend *pro se*." *Snead v. State*, 286 Md. 122, 123 (1979). *See also Faretta v. California*, 422 U.S. 806, 819 (1975) ("The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his [or her] defense."). The Supreme Court of Maryland[2] adopted Maryland Rule 4-215 to implement these constitutional guarantees. *Williams v. State*, 321 Md. 266, 271 (1990). Rule 4-215(e) provides, in relevant part, as follows:

> 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.

When a defendant requests to discharge counsel before trial, the court must abide by the precise rubric set forth in Maryland Rule 4-215(e). *State v. Hardy*, 415 Md. 612, 621 (2010). Indeed, "'[t]he provisions of the rule are mandatory' and a trial court's departure

[2] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

from them constitutes reversible error." *Id.* (quoting *Williams v. State*, 321 Md. 266, 272 (1990)). "We review *de novo* whether the circuit court complied with Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012).

After a hearing held in May 2021, the circuit court denied Mr. Thurston's motion to suppress. Later that month, although Mr. Thurston was then represented by counsel, Mr. Thurston filed a *pro se*, 29-page, handwritten motion entitled: "Motion for *Franks* Hearing Violation of Fourth Amendment Constitutional Rights Lack of Probable Cause in the Officers Application Affidavit September 8, 2017." In that motion, Mr. Thurston requested a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), "based upon false information as to physical material evidence in the application affidavit contained knowingly false statements and/or statements made with reckless disregard for the truth, the absence of which would not be enough to find probable cause[.]" Mr. Thurston, in essence, argued that the officers made knowingly false statements in the search warrant application, which resulted in the discovery of the firearm in the truck that Mr. Thurston was driving.

At a hearing held on August 24, 2021, approximately six months before trial, the court ruled that Mr. Thurston was competent to stand trial. After that ruling, the court addressed Mr. Thurston's *pro se Franks* motion:

> Now the only other issue before the Court which we're going to take up today is Mr. Thurston's desire to discharge [defense counsel] and represent himself in this matter. I understand that there are other issues. For example, Mr. Thurston has filed a pro se motion. There's a motions hearing date in this matter set for September the 8th. We're not going to take that up today. That will be heard on the 8th. And then there's a -- I

> think the trial date is -- trial dates have been established in this matter of October the 27th, 28th and 29th.
>
> The Court now is going to address Mr. Thurston's previously expressed desire to discharge [defense counsel] and represent himself. Is that still what you want to do, Mr. Thurston?

Mr. Thurston replied by denying that he wanted to discharge counsel: "Your Honor, I have to object to that. I didn't have no desire to do that at all. [Defense counsel] came back to the back cell and says look, the Judge said that you can represent this Franks hearing if you fire me. Put me in no choice of the matter." During the colloquy that followed, Mr. Thurston repeatedly mentioned his *pro se Franks* motion. Defense counsel stated that she did not intend to litigate Mr. Thurston's *Franks* motion:

> [THE COURT:] And I think I recall from the last hearing of this matter that [defense counsel] does not believe that your motion for a Franks hearing is legally and factually sound and should be presented to the Court.
>
> Is that --
>
> MR. THURSTON: Well, I'm going to object to that, too --
>
> THE COURT: -- is that an accurate statement of your position, [defense counsel]?
>
> [DEFENSE COUNSEL]: That's correct, Your Honor.

Mr. Thurston then apparently showed the court "a federal bench book" and the following colloquy occurred:

> MR. THURSTON: This is a federal bench book requirements. This is a federal bench book. When you reopen a case six months after a jury trial -- after a statement of charges, four months after a grand jury with evidence adverse to what was in that application after that is a lack of probable cause.
>
> And I'd like for my lawyer to read this highlighted section right here, and do that to the prosecutor, and then let you make that ruling

whether it has any merit or not. That way, on direct appeals on de novo, we can tear you up on a direct appeal because she's lying, and she knows she's lying. And I'd like for you to read that.

* * *

[THE COURT:] If you want to prosecute that motion, it will be because you have discharged her and represented yourself because -- or get some other lawyer to represent you, if you want to hire a lawyer. But she's not going to prosecute that motion in this courtroom. Last time you said you wanted to discharge her --

MR. THURSTON: No, I did not.

THE COURT: -- for that reason because she refuses to prosecute this motion on your behalf.

MR. THURSTON: She give me an ultimatum. That's what she gave me, and I --

THE COURT: Well, I --

MR. THURSTON: -- -- have no choice because I got to go after the truth. The truth is powerful. You can't refute that. And I intend to cram it down [the prosecutor's] throat for representing dirty cops from Wicomico County, set that little state trooper up. That's what they did. Gave her a null and void search warrant and gave her evidence that is clearly in violations of the Fourth Amendment, a lack of probable -- there wasn't no crime committed on July 14th. And on page 153, on **--**

At that point, the court interrupted Mr. Thurston and attempted to ask him questions to determine whether his request to discharge counsel was knowing and voluntary. Mr. Thurston, however, persisted in referencing his *Franks* motion as he made the following statements to the court:

[THE COURT:] Do you want to discharge her or not?

MR. THURSTON: Yeah. We're going to have to do that. But I'm going to need a standby to enter my exhibits properly for me.

> THE COURT: Then yes -- yes -- do you want to discharge her?
>
> MR. THURSTON: Yes. And I said I'm going to need a standby to enter my exhibits and describe them precisely with my Franks hearing.
>
> THE COURT: We're not getting to that right now. We're --
>
> MR. THURSTON: I want my Franks motion represented.
>
> THE COURT: -- we're getting to the issue of whether you discharge her or not.
>
> MR. THURSTON: She's ineffective if she don't represent this. She would be ineffective all day long if the law supports me.

Shortly thereafter, Mr. Thurston accused the court of "trying to get rid of" his attorney, as Mr. Thurston continued to reference his *Franks* motion:

> MR. THURSTON: I'm going to object, Your Honor, to that because you're trying to get rid of her, and she won't represent the Franks motion --
>
> THE COURT: You either want to discharge her or not.
>
> MR. THURSTON: -- 4-263(g).
>
> THE COURT: Do --
>
> MR. THURSTON: Tony Williams v. The State of Maryland, this bench book requirement. It's a federal bench book requirement. It's a Cambridge case.

Mr. Thurston then said that he did not want to discharge his attorney unless the court granted him a "standby[,]" as Mr. Thurston once again referenced the 29-page *Franks* motion that he had filed:

> THE COURT: Do you want to discharge her?
>
> MR. THURSTON: I don't unless you give me a standby. Yeah, we'll get rid of her because she's inept. She's a very ineffective assistant not to represent a -- I had the 29-page --

The court was unwilling to grant a standby attorney to Mr. Thurston. The court again tried to clarify whether Mr. Thurston wanted to discharge his counsel. Mr. Thurston failed to answer the court's question, and then Mr. Thurston attempted to insult the court:

> THE COURT: You don't have a right -- just a second. You don't have the right to a standby attorney. And frankly, given the history of this case, the Court's not going to appoint a standby attorney to represent you because you believe that -- you believe that your knowledge is superior to that of an attorney, including this attorney and your previous attorneys, and it would be not in the furtherance of justice to appoint a standby attorney to represent you.
>
> So your choice is to have [defense counsel], or represent yourself or hire a private attorney which I suspect you don't have the ability to do that. So which is it that you want? Do you want [defense counsel] to represent you?
>
> MR. THURSTON: Could I say something to you?
>
> THE COURT: No. You already said --
>
> MR. THURSTON: When I -- no. See, you want to restrict me.
>
> THE COURT: You're right.
>
> MR. THURSTON: That's what I'm talking about. You seem like a shyster judge working for the damn prosecutor's office. That's what you seem to -- you keep restricting me, and I'm trying to produce law to you.
>
> And I want her to do it. I want her to do this right here, right here and to that prosecutor right there[.] I want her to do just that, and then let it be on your shoulders and make that decision.

Defense counsel then moved to withdraw and stated: "I do not find validity in the Franks motion as filed pro se by Mr. Thurston." The court then denied defense counsel's motion to withdraw and found, in part, as follows:

> I don't think that the Court can find that Mr. Thurston's desire to discharge [defense counsel] is knowing and voluntary inasmuch as he has declined, continues to decline to answer the Court's questions which the Court is required by law to pose to a defendant who wishes to discharge counsel in order to make that finding.

As to Mr. Thurston's motion to discharge counsel, the court found, in part, as follows:

> [F]irst of all, I start with the proposition that Mr. Thurston is not able to afford private counsel. So then the issue is whether the Office of the Public Defender would appoint another attorney to represent Mr. Thurston. And it seems clear to me that's not going to happen in light of his history with the Office of the Public Defender. He's discharged multiple public defenders in this case. And it's the Court's impression that [defense counsel's] appointment to represent -- on behalf of the public defender to represent Mr. Thurston was made after some considerable soul searching by the Office of the Public Defender.
>
> So returning to my original point which is the least bad choice for the Court in this matter is to deny [defense counsel's] request to strike her appearance in this matter, it would be the Court's hope that some accommodation could be reached between [defense counsel] and her client in terms of presenting this motion or any other issues that Mr. Thurston believes are dispositive -- could be dispositive of this case. And if not, then the case will be tried before a jury with Mr. Thurston represented by [defense counsel] as best can be done.
>
> * * *
>
> It strikes me that [defense counsel], a lawyer of considerable experience and judgment, the lawyer who in my view has raised -- identified and raised at least one issue in a motion that was heard by this Court that is interesting, let's put it that way, an issue about which reasonable lawyers and jurists could differ.
>
> The Court has been impressed by her representation of you thus far.

On appeal, Mr. Thurston argues that the court did not provide him with "an opportunity to explain his reasons for wanting to discharge counsel, except for his dissatisfaction with counsel not requesting a hearing under *Franks v. Delaware*, . . .

which Mr. Thurston had requested in a *pro se* motion." We disagree. "Although the trial judge need not engage in a full-scale inquiry pursuant to Rule 4-215, the judge must at least consider the defendant's reason for requesting dismissal before rendering a decision" on whether that reason is meritorious. *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quotation marks and citation omitted). The record here demonstrates that the court more than adequately considered Mr. Thurston's reason for requesting dismissal of his counsel.

Hawkins v. State, 130 Md. App. 679, is instructive. Just before a suppression hearing, Hawkins asked to discharge his court-appointed attorney. *Id*. at 683. "Before considering any additional information, the administrative judge responded, 'No. I'm not going to let him.'" *Id*. This Court concluded that "[t]he judge made his initial ruling before either listening to or considering any explanation[,]" and later "when [Hawkins] was in the process of explaining why he wanted to discharge his court-appointed attorney, the judge interjected, 'We are not getting into that issue, sir.'" *Id*. at 687-88. This Court observed that "[w]hat the judge did not wish 'to get into' was the very thing that the court was required to ask him about and carefully consider." *Id*. at 688. As a result, this Court reversed and remanded for a new trial. *Id*.

Similarly, in *Johnson v. State*, 190 Md. App. 275 (2010), when the court was advised at the beginning of a motion hearing that Johnson said something to the prosecutor '"about the release of his counsel[,]"' the court said: '"That's not going to happen.'" *Id*. at 280. We held that "Rule 4-215(e) was violated when the court was

made aware of appellant's desire to discharge counsel but did not ask for or consider [his] reasons for wanting to do so before denying the request." *Id*. at 288.

In contrast, the court here provided Mr. Thurston with ample opportunity to explain his reasons for potentially wanting to discharge counsel. Spanning about sixteen pages of transcription, the colloquy regarding Mr. Thurston's request to discharge counsel was extensive. As Mr. Thurston provided contradicting answers as to whether he wanted to discharge counsel, his oration had one clear, central, and overarching theme: Mr. Thurston wanted his *Franks* motion to be litigated. His defense counsel, however, found no validity in Mr. Thurston's *Franks* motion. As the court correctly determined, a disagreement over legal strategy is not a meritorious reason to discharge counsel. *Cousins v. State*, 231 Md. App. 417, 443 (2017).

Mr. Thurston argues that the court erred because the court eventually requested that Mr. Thurston simply answer "yes or no" to the court's questions. The purpose of that request was to determine whether Mr. Thurston was knowingly and voluntarily deciding whether to discharge counsel. Despite the court's request, Mr. Thurston again repeated his desire to have his *Franks* motion litigated. We find no error in the court's line of questioning. Indeed, "[b]ecause a defendant, by choosing to represent himself, is waiving the right to counsel, the court must conduct an inquiry to ensure that the defendant's waiver of counsel is knowing and intelligent." *State v. Campbell*, 385 Md. 616, 627 (2005).

Lastly, Mr. Thurston points us to an excerpt of the judge's ruling, which stated as follows: "Mr. Thurston is obviously dissatisfied with [defense counsel's] representation

thus far in this matter including her position with respect to this motion which he filed pro se." From that ruling, Mr. Thurston contends that the "judge's ruling reflects that he knew Mr. Thurston had other issues with his lawyer *besides* her refusal to litigate a *Franks* motion[.]" Mr. Thurston's interpretation of the judge's quote lacks context. The court's next sentence was as follows: "The Court has determined that [Mr. Thurston's] reason for wanting to discharge [defense counsel] is non-meritorious." By using the singular noun "reason[,]" the court indicated that there was only one reason why Mr. Thurston wanted to discharge his counsel: his counsel refused to litigate Mr. Thurston's *Franks* motion.

For all these reasons, the motions court complied with Md. Rule 4-215.

II.

After the State rested at trial, Mr. Thurston again requested to discharge counsel, and the court denied his request. Mr. Thurston argues that the court erred because it neither determined nor considered Mr. Thurston's reasons for wanting to discharge counsel. Mr. Thurston acknowledges that Rule 4-215(e) does not apply after the trial has commenced. *See State v. Brown*, 342 Md. 404, 428 (1996). The Court stated:

> [O]nce meaningful trial proceedings have begun, the right to substitute counsel and the right to defend pro se are curtailed to prevent undue interference with the administration of justice. Thus, once trial begins, exercise of these rights is subject to the trial court's discretion. Rule 4-215 is designed to ensure that courts comply with constitutional requirements in advising defendants of the Sixth Amendment right to counsel. The Rule is not intended to deprive the courts of discretion regarding motions to discharge counsel after trial has commenced. We therefore conclude that the Rule is inapposite once trial is underway.

Id. at 412 (citation omitted).

Thus, when Rule 4-215 is inapplicable, the decision whether to allow a discharge of counsel is entirely within the discretion of the trial court. *See State v. Hardy*, 415 Md. at 629 ("If the court provides this opportunity, how to address the request is left almost entirely to the court's 'sound discretion.'"). The court should consider six factors when exercising its discretion in this regard: "(1) the merit of the reason for discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel." *Brown*, 342 Md. at 428.

The Supreme Court of Maryland has further explained:

> When a defendant makes a request to discharge counsel at a time when Rule 4-215(e) does not apply strictly, "[t]he court must conduct an inquiry to assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption" and rule on the request exercising broad discretion. *Brown*, 342 Md. at 428. The court's burden in making this inquiry is to provide the defendant the opportunity to explain his or her reasons for making the request; in other words, the court need not do any more than supply the forum in which the defendant may tender this explanation. *See Campbell*, 385 Md. at 635 (stating that "the trial judge was not required to make any further inquiry" after the defendant made clear his reasons for wanting to dismiss his counsel); *Brown*, 342 Md. at 430 (describing court's burden as duty to "*provide an opportunity* for [the defendant] to explain his [or her] desire to discharge counsel" (emphasis added)).

Hardy, 415 Md. at 628. In short, it is "the defendant's duty to explain fully the reasons for the request after this opportunity has been provided, rather than there being a continuing burden on the trial judge to probe the defendant with questions until the defendant has given a fuller answer." *Id*. at 628 n.12. Accordingly, we will find an abuse

of discretion only "when [the trial court] fail[s] to allow a defendant *any* opportunity to explain his or her request *at all*, thus making it impossible to consider the six factors in *Brown*." *Id*. at 629 (emphasis added).

Here, Mr. Thurston claims that the court failed to provide him with a forum to explain the reasons why he twice requested to discharge counsel after the State's case-in-chief. At that time, Mr. Thurston first asked to discharge counsel when his counsel stated that she would not use a different copy of a CD that contained a jail call:

> MR. THURSTON: Your Honor, I got a CD that don't have a glitch in it.
>
> THE COURT: What did you say?
>
> MR. THURSTON: I've got a CD that don't have a glitch in it from the phone call of September the 3rd.
>
> THE COURT: Well, confer with your lawyer about that.
>
> MR. THURSTON: I will. And I'd like for you to replay that to the jury. Mine don't have a glitch in it.
>
> THE COURT: All right. Let your lawyer make that decision.
>
> MR. THURSTON: You're going to do that?
>
> [DEFENSE COUNSEL]: No, I am not.
>
> MR. THURSTON: You're not. I'd like to fire my lawyer.
>
> THE COURT: Pardon me?
>
> MR. THURSTON: I'd like to fire my lawyer.
>
> [THE STATE]: Judge, I plan on playing it without the glitch in it.
>
> THE COURT: Okay.
>
> [THE STATE]: Just so you know.

THE COURT: Okay. It's going to be played without glitches.

Shortly after, Mr. Thurston said he wanted to fire his defense counsel again. That request was apparently based on Mr. Thurston's desire to address the jury at closing arguments without having "to worry about testifying":

> [DEFENSE COUNSEL]: Mr. Thurston, you understand that you have a right to testify here today in your trial?
>
> MR. THURSTON: I want to fire you.
>
> THE COURT: Well, that's not the issue right now. The issue is whether or not you want to testify.
>
> MR. THURSTON: No, I don't have to testify. **If I fire her I can represent myself and I don't have to worry about testifying.**
>
> THE COURT: All right. Well, your request --
>
> MR. THURSTON: **And I'd like to give the closing arguments.**
>
> THE COURT: At this point the issue is whether or not you discharged your attorney[.] The answer is no, you can not discharge her now. So you confer with her about who will make the closing argument. But if she's your attorney, I suspect you should let her make the argument and not you. You're not trained as a lawyer.

(Emphasis added.) Defense counsel later noted that she had spoken with Mr. Thurston several times about his decision to not testify:

> [DEFENSE COUNSEL]: I would indicate, Your Honor, for the record, that I've had this conversation with him on several occasions.
>
> THE COURT: I'm sure you have.
>
> [DEFENSE COUNSEL]: He has not indicated he wanted to testify. And he is aware that he has impeachable prior offenses that would be brought to the jury's attention in all likelihood if he were to testify.

The trial court denied Mr. Thurston's request to discharge counsel, ruling as follows: "The question of whether or not the Defendant should fire his attorney or discharge his attorney, . . . at this juncture, comes very late in the game, therefore I deny that motion."

The contexts of Mr. Thurston's requests show that the trial court afforded Mr. Thurston "the opportunit[ies] to explain his . . . reasons for making the request" to dismiss counsel. *Hardy*, 415 Md. at 628. Indeed, the trial court was not required to "do any more than supply the forum in which the defendant may tender this explanation." *Id.*

First, Mr. Thurston explained that he wanted to use a CD with a recording of a jail call that did not contain a glitch. Mr. Thurston's counsel said that she would not use the CD that Mr. Thurston wanted to use. As a result of that disagreement, Mr. Thurston stated that he wanted to discharge his counsel. The trial court assured Mr. Thurston, based on the representations of the State, that the CD at issue would be "played without glitches."

Second, Mr. Thurston wanted to give a closing argument and address the jury without testifying. To accomplish that goal, Mr. Thurston again stated that he wanted to discharge his counsel:

> No, I don't have to testify. If I fire her I can represent myself and I don't have to worry about testifying. . . . And I'd like to give the closing arguments.

In both instances, Mr. Thurston explained the reasons why he wanted to discharge his counsel. Because Mr. Thurston's "reasons for wanting to dismiss his counsel were apparent based upon his statements, the trial judge was not required to make any further

inquiry." *Campbell*, 385 Md. at 635. *See also Hardy*, 415 Md. at 629 (holding that the trial court abuses its discretion when it "fail[s] to allow a defendant any opportunity to explain his or her request at all").

Moreover, applying the factors outlined in *Brown*, we conclude that the trial court properly denied Mr. Thurston's requests to discharge counsel. We agree with the State that the court's responses to Mr. Thurston's requests show that the court determined that Mr. Thurston's requests lacked merit. Indeed, as to Mr. Thurston's claim about the functionality of the CD that contained the jailhouse call, the trial court assured him: "It's going to be played without glitches." As to Mr. Thurston's desire to give the closing argument to the jury, the court stated: "So you confer with [your defense counsel] about who will make the closing argument. But if she's your attorney, I suspect you should let her make the argument and not you. You're not trained as a lawyer." The other *Brown* factors, whether the discharge of counsel would have a disruptive effect on the proceedings, the timing of the request, and the complexity and stage of the proceedings, likewise support the trial court's decision. *Brown*, 342 Md. at 428. The court properly noted that Mr. Thurston's requests occurred "very late in the game[.]" To be sure, the trial court did not expressly address Mr. Thurston's prior requests to discharge counsel. But as Mr. Thurston correctly concedes in the reply brief filed by his appellate counsel, "a trial court does not need to make explicit findings as to why a defendant is requesting to discharge counsel or why the court is denying that request[.]"

For all these reasons, the trial court properly considered Mr. Thurston's requests to discharge his counsel, and the court did not err in denying those requests.

III.

Lastly, Mr. Thurston argues that the State failed to establish that he knowingly, intelligently, and voluntarily waived his *Miranda* rights.[3] He contends that his *Miranda* waiver was invalid because he was not informed about the charges he was facing before he waived his rights.[4] In addition to claiming that his *Miranda* waiver was involuntary, Mr. Thurston also advances the argument that his statements were involuntary under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article 22 of the Md. Declaration of Rights, and Maryland non-constitutional law.

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[3] *Miranda v. Arizona*, 384 U.S. 436 (1966)

[4] We note that Mr. Thurston raised, in essence, this same argument about this same police interview in another appeal that stemmed from criminal charges against Mr. Thurston in the Circuit Court for Wicomico County. *See Thurston v. State*, No. 182, Sept. Term 2019, 2020 WL 4464650, at *2-6 (Md. App. Aug. 3, 2020) (analyzing the August 18, 2017 interview and rejecting Mr. Thurston's claim that "his *Miranda* waiver was invalid because he was not informed of the charges against him before he waived his rights and he felt coerced into signing the waiver to learn of the charges against him").

In that unreported opinion ("No. 182, Sept. Term 2019"), this Court "conclude[d] that the circuit court properly denied [Mr. Thurston's] motion to suppress his statement to the police." *Id*. at *6. Although No. 182, Sept. Term 2019 analyzed the same issue that is now before this Court, No. 182, Sept. Term 2019 stemmed from a different suppression hearing in a different county. Thus, we need not decide whether Mr. Thurston is estopped from twice making this argument before this Court in different cases.

Nonetheless, we reach the same conclusion about Mr. Thurston's claim as did this Court in No. 182, Sept. Term 2019: the circuit court did not err in denying Mr. Thurston's motion to suppress. We reach that conclusion based on our own independent review of the record in this case, without reliance on our decision in No. 182, Sept. Term 2019.

A. Standard of review

In *Thomas v. State*, 429 Md. 246 (2012), the Court set forth the standard of review of a court's ruling on a motion to suppress as follows:

> Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party. We undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

Id. at 259 (cleaned up).

B. Suppression hearing facts

At the suppression hearing held in May 2021, Detective Oakley testified that he interviewed Mr. Thurston with Corporal Clark. The interview lasted "a couple hours." Defense counsel cross-examined Detective Oakley about Mr. Thurston's desire to know what charges he was facing:

> [DEFENSE COUNSEL:] Sir, so, Officer, in fact, isn't it correct that essentially as soon as he sits down and you start speaking with him, Mr. Thurston says, "What am I being arrested for?"
>
> [DETECTIVE OAKLEY:] Correct. On page 4, line 11, the question Mr. Thurston asks is, "What am I being charged with?"
>
> [DEFENSE COUNSEL:] Okay. And you-all have a conversation for a little while, where you say, "Hey, I got questions for you, and you got questions for me. But, you know, in order for me to answer your questions, I need you to sign off on this advice of rights," essentially. Is that fair to say?
>
> [DETECTIVE OAKLEY:] Correct. We certainly had to go over his Miranda in order to have a conversation.

Detective Oakley later admitted that he could have informed Mr. Thurston of the charges without first advising him of his *Miranda* rights. Detective Oakley further testified that Mr. Thurston was read his *Miranda* rights, that Mr. Thurston waived those rights, and that Mr. Thurston signed the advice of rights form.

Mr. Thurston's counsel argued that Detective Oakley coerced Mr. Thurston into waiving his *Miranda* rights:

> [DEFENSE COUNSEL:] And the officer repeatedly keeps saying, "Hey, I'd love to tell you what you're charged with, but you've got to waive Miranda first for me to do that," which is an utter and complete lie regarding the state of the Miranda waivers. And I think that's -- while officers do not necessarily have to be truthful in their discussions with defendants, I do not think that it is appropriate or -- I do not think that they can carry that to a point where they can misrepresent and lie about the state of Miranda.

At the end of the hearing, the court found that Mr. Thurston was properly advised of his rights and voluntarily agreed to speak to law enforcement.

C. The voluntariness of the *Miranda* waiver

"The State has the burden to prove by a preponderance of the evidence a knowing, intelligent, and voluntary waiver of the defendant's rights under *Miranda*." *Madrid v. State*, 474 Md. 273, 310 (2021). In *Moran v. Burbine*, 475 U.S. 412 (1986), the Supreme Court of the United States described the requirements for a determination that *Miranda* rights have been waived:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal[s] both an

> uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Id. at 421 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

Detective Oakley read the *Miranda* rights to Mr. Thurston and asked him to initial the advice of rights form to signify that he had read the rights. Mr. Thurston declined to initial on the form:

> DETECTIVE OAKLEY: And I'll show it to you, what I just read. I just read those, and all this is saying is that I read them to you or have them explained to you, these rights, and I have. I'll finish reading that, which is the final part, but this is just saying that they were read to you, okay? And if you could initial next to these.
>
> MR. THURSTON: I don't want to. Come on.
>
> DETECTIVE OAKLEY: That was just saying that I read them, that's all.

Although Mr. Thurston did not initial next to the individual rights he was waiving on the advice of rights form, he later signed the portion of the form that provides: "I have read or have had read to me this explanation of my rights." He also signed the portion of the form that confirmed his waiver of those rights: "I fully understand each of these rights and am willing to answer questions without consulting a lawyer or having a lawyer present at this time. My decision to answer questions is entirely free and voluntary and I have not been promised anything nor have I been threatened or intimidated in any manner."

Under these circumstances, the officer's refusal to tell Mr. Thurston about his charges without a *Miranda* waiver did not render the *Miranda* waiver involuntary. *Colorado v. Spring*, 479 U.S. 564 (1987), is instructive. In *Spring*, an informant told

agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF) that Spring was engaged in the interstate transportation of stolen firearms. *Id*. at 566. According to the informant, Spring had also discussed his participation in a shooting in Colorado that resulted in the death of Donald Walker. *Id*. In March 1979, the ATF agents set up an undercover operation to purchase illegal firearms from Spring, during which Spring was arrested. *Id*. Spring was advised of his *Miranda* rights, and he "signed a written form stating that he understood and waived his rights, and that he was willing to make a statement and answer questions." *Id*. at 567. The ATF agents then questioned Spring about the firearms transactions that led to his arrest. *Id*. The agents also asked Spring if he had killed a man named Walker in Colorado. *Id*. Spring replied, "No." *Id*.

About two months later, Colorado law enforcement officers visited Spring while he was in jail in Kansas City. *Id*. Spring again waived his *Miranda* rights and confessed to the Colorado murder. *Id*. Spring was charged in Colorado state court with first-degree murder. *Id*. at 568. He moved to suppress his statements, arguing that his waiver of his *Miranda* rights was involuntary because, before the March interview began, he was not informed that the agents would question him about the Colorado murder. *Id*. The suppression court found that the agents' failure to inform Spring about the Colorado murder did not affect his waiver of his *Miranda* rights. *Id*.

On appeal, the Colorado Court of Appeals reversed, finding that "the ATF agents 'had a duty to inform Spring that he was a suspect, or to readvise him of his *Miranda* rights, before questioning him about the murder.'" *Id*. at 569 (quoting *People v. Spring*, 671 P.2d 965, 966 (Colo. App. 1983)). The Colorado Supreme Court affirmed the

judgment of the Colorado Court of Appeals. *People v. Spring*, 713 P.2d 865, 874 (Colo. 1985).

The Supreme Court of the United States reversed the judgment of the Colorado Supreme Court, explaining that "the failure of the law enforcement officials to inform Spring of the subject matter of the interrogation could not affect Spring's decision to waive his Fifth Amendment privilege in a constitutionally significant manner." 479 U.S. at 577. Moreover, the Court held that "the additional information could affect only the wisdom of a *Miranda* waiver, not its essentially voluntary and knowing nature." *Id.*

So too here, the additional information about Mr. Thurston's charges "could affect only the wisdom of a *Miranda* waiver," not its voluntariness. *Id.* Indeed, the advice of rights form, which Mr. Thurston signed, conveyed to him that he was free to refuse to answer questions. *See United States v. Washington*, 431 U.S. 181, 188 (1977) ("[I]t seems self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled."). *See also Ratchford v. State*, 141 Md. App. 354, 365-66 (2001) (holding that the failure of a detective to advise the defendant that the subject of the interrogation was a triple murder did not invalidate his *Miranda* waiver as a matter of law). The court did not err in determining that Mr. Thurston voluntarily waived his *Miranda* rights.

D. The voluntariness of Mr. Thurston's custodial statements

"A trial court may not admit a confession made during a custodial interrogation that is involuntary under the common law of Maryland, the Due Process Clause, or Article 22." *Madrid*, 474 Md. at 317 (citing *Brown v. State*, 452 Md. 196, 209-10

(2017)). "Where a defendant moves to suppress a confession on the ground that it was involuntary, the State has the burden to prove by a preponderance of the evidence that the confession was voluntary." *Id.* (citing *Hill v. State*, 418 Md. 62, 75 (2011)).

Under the common law of Maryland, a confession is involuntary where "it is the product of an improper threat, promise, or inducement by the police." *Lee v. State*, 418 Md. 136, 158 (2011). The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]" The Self-Incrimination Clause of the Fifth Amendment provides: "No person … shall be compelled in any criminal case to be a witness against himself[.]" The Self-Incrimination Clause applies to the States through the Due Process Clause of the Fourteenth Amendment. *See Dickerson v. United States*, 530 U.S. 428, 434 (2000). Under both the Due Process Clause and the Self-Incrimination Clause, a confession made during a custodial interrogation must be voluntary to be admissible. *See id.* at 432-33.

The Self-Incrimination Clause's Maryland counterpart is Article 22 of the Maryland Declaration of Rights: "That no man ought to be compelled to give evidence against himself in a criminal case." The Supreme Court of Maryland has generally interpreted Article 22 *in pari materia* with the Self-Incrimination Clause. *See, e.g.*, *Madrid*, 474 Md. at 320.

The Supreme Court of the United States has set forth a test for voluntariness that precludes the admission of statements that are "the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee*, 418 Md. at 159

(citing *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991)). Many factors can bear on the voluntariness of a defendant's statement, including the following:

> where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest; and whether the defendant was physically mistreated, physically intimidated[,] or psychologically pressured.

Hof v. State, 337 Md. 581, 596-97 (1995) (citations omitted).

Mr. Thurston argues that "Detective Oakley's material misrepresentation regarding Mr. Thurston's Miranda rights eventually coerced Mr. Thurston into signing the Miranda waiver." We disagree. Our own independent constitutional appraisal of the record leads us to the same conclusion that the circuit court formed:

> [THE COURT:] It's clear to this Court that [Mr. Thurston] was properly given his advice under Miranda and waived those rights and agreed to speak with the police officers. That was voluntary. There were no improper inducements or threats or anything else that would invalidate or call into question the legitimacy and efficacy of his understanding and waiver of his rights under Miranda.
>
> It's clear that the police officer -- officers were attempting to engage him in conversation and that he wanted to be engaged in conversation, if you will. And the police officers made it clear that, if so, they were going to engage him in conversation, he would have to agree to waive his rights under Miranda, and he did. In the Court's view, a fair reading of the entirety of the transcript doesn't demonstrate any impropriety . . . on the part of the police officers in connection with that interview.

Indeed, this case is far removed from the type of police deception that will render a confession involuntary. For example, in *Luckett v. State*, 413 Md. 360 (2010), a detective advised the defendant of his *Miranda* rights, including that he had a right to an

attorney. *Id*. at 380. Later, the detective told the defendant that he did not need counsel for anything that they discussed outside the investigation. *Id*. at 381. When the defendant asked him to clarify, the officer responded that the defendant did not need a lawyer. *Id*. at 371. The Supreme Court of Maryland held that the "'clarifications' and 'explanations' of the rights" were improper and "nullified what otherwise were proper warnings[.]" *Id.* at 381. The detective's recitation of *Miranda* rights were rendered "constitutionally infirm" because of the detective's "[legally] incorrect advisements" to the defendant that the "right to counsel applied only to discussion of the specifics of 'the case[.]'" *Id*. at 383. The Court concluded that "no police officer advising a suspect of his rights under *Miranda* should intimate, much less declare affirmatively, a limitation upon the right to counsel." *Id*. at 382.

By contrast, Detective Oakley did not suggest any limitation on Mr. Thurston's right to counsel. To be sure, Detective Oakley misrepresented his ability to advise Mr. Thurston of the charges without first obtaining a *Miranda* waiver. But that misrepresentation did not "nullif[y] what otherwise were proper warnings[.]" *Id.* at 381. The court did not err in denying Mr. Thurston's motion to suppress his statements.

E. Harmless error

Moreover, we agree with the State that even if the court erred in denying the motion to suppress, that error would be harmless beyond a reasonable doubt. *See, e.g.*, *Gross v. State*, 481 Md. 233, 237 (2022) (Harmless error occurs when "the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the

jury's verdict" and reaffirms that the court may consider "the cumulative nature of an erroneously admitted piece of evidence when conducting harmless error analysis.").

In the recordings of the jailhouse calls that were admitted at trial, which this Court has reviewed, Mr. Thurston made highly inculpatory statements as to his consciousness of guilt pertaining to the gun that was found in the vehicle that he was driving, in a FedEx envelope bearing his name. The State made limited use of Mr. Thurston's custodial interview at trial. To be sure, the State referenced the interview during closing argument: "You also heard that once the Defendant is arrested, he states that I'm the only person that drives that vehicle, that's my truck." But the State referred to the jail calls as the "most damning" evidence.

Indeed, in one of those jail calls, Mr. Thurston asked another individual to search the car for the FedEx envelope and contraband:

> MR. THURSTON: When you pick that truck up, you find a place to pull over where there's water and take the tru[c]k there and tow out of it and search it for contraband. Search i[t] really thoroughly for contraband and then get rid of it, if it's in there, and then that's it.
>
> FEMALE VOICE: Okay.

Mr. Thurston followed up on his request in another recorded jail call that was played at trial:

> MR. THURSTON: I asked you to go out there and you searched the truck, right?
>
> FEMALE VOICE: And I did.
>
> MR. THURSTON: And did you take everything out, you know, you know, and look under the seat and everything?

FEMALE VOICE: Yes, I did.

MR. THURSTON: Was there a blue Fedex cardboard envelope?

FEMALE VOICE: A blue Fedex cardboard envelope? No.

MR. THURSTON: There wasn't?

FEMALE VOICE: No, there was not.

In yet another jail call, Mr. Thurston stated "I didn't want them to find what was in that truck." The jail calls were the primary focus of the State's closing argument. The jury deliberated for about sixteen minutes before finding Mr. Thurston guilty. Even without Mr. Thurston's custodial statement, the evidence of possession was overwhelming. Given the jail calls and the location of the firearm — in the vehicle that Mr. Thurston was driving, in a FedEx envelope bearing his name — we are persuaded that any error in admitting Mr. Thurston's custodial statements was harmless beyond a reasonable doubt.

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