Circuit Court for Anne Arundel County
Case No. C-02-CR-21-001818

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 502

September Term, 2022

DUANE COREY JOHNSON

v.

STATE OF MARYLAND

Reed,
Tang,
Albright,

JJ.

Opinion by Albright, J.

Filed: May 16, 2023

*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.

**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.

Duane Corey Johnson was driving in Anne Arundel County when he was stopped for broken taillights. Officers on the scene requested a drug-sniffing dog, or "K-9," which arrived at the scene and alerted. A search of Mr. Johnson's car then revealed crack cocaine. Mr. Johnson filed a motion to suppress, alleging that officers violated his Fourth Amendment rights by unreasonably prolonging his traffic stop, which delay caused the stop to extend beyond the point when the K-9 alerted. Mr. Johnson's motion to suppress was denied.

Next, on the morning of trial, but before it started, Mr. Johnson sought to discharge his counsel and postpone his trial date, alleging that he and his attorney disagreed on the strategy to be employed. His motion was denied. Mr. Johnson was then convicted in the Circuit Court for Anne Arundel County of one count of possessing a controlled dangerous substance.[1]

Mr. Johnson now appeals, asking us to consider two questions, which we have rephrased:[2]

[1] *See* Md. Code, Crim. Law. § 5-601(a).

[2] Mr. Johnson phrased his questions as follows:

> 1. Did the motions court err by denying Mr. Johnson's motion to suppress when the police unlawfully and unreasonably delayed the traffic stop for the purpose of conducting a K-9 scan?
>
> 2. Did the motions court err by denying Mr. Johnson's motion to discharge counsel without giving Mr. Johnson adequate opportunity to explain his reasons?

1. Did the suppression court err by denying Mr. Johnson's motion to suppress?

2. Did the motions court err or abuse its discretion by denying Mr. Johnson's motion to discharge counsel?

For the reasons below, we conclude that the circuit court did not err in denying Mr. Johnson's motions to suppress and to discharge his counsel. We will affirm the circuit court's judgment.

BACKGROUND

I. The Traffic Stop

We summarize the facts adduced at the suppression hearing.[3]

Mr. Johnson was driving his vehicle in Anne Arundel County when police officers on patrol, including Det. Shane Fraser, noticed that Mr. Johnson's vehicle did not have working taillights. The officers initiated a traffic stop,[4] and Mr. Johnson pulled into a nearby parking lot. Two minutes later, two additional officers, including Det. Glenn Wright, arrived to assist. At the same time, a K-9 unit was summoned.

Dets. Fraser and Wright had stopped Mr. Johnson before. About one year earlier, they participated in a traffic stop in which a loaded firearm was recovered from Mr. Johnson's vehicle and he had argued with police. As a result, officers thought it prudent to take additional precautions during this traffic stop.

[3] At this hearing, the State called two witnesses, Detective Shane Fraser and Detective Glenn Wright, both of the Anne Arundel County Police Department. The Defense did not call any witnesses.

[4] The traffic stop occurred at 12:11 a.m.

Officers noticed that Mr. Johnson's vehicle did not display valid registration stickers, and they discovered that there was a "pick-up" order for Mr. Johnson's tags "for an insurance lapse."[5] After obtaining Mr. Johnson's license, an officer searched Mr. Johnson's information in a law enforcement database, discussing a notification for expired registration tags and a lack of insurance coverage. Mr. Johnson was asked to provide proof of insurance, but he was initially unable to do so. Later, however, Mr. Johnson provided officers with the name of an insurance company and policy number.[6] One of the officers attempted to locate insurance information for Mr. Johnson from a computer terminal inside one of the patrol cars, but had "some problems[.]" Det. Fraser asked that officer to exit the patrol car, so that Det. Fraser could step in and continue searching for insurance information himself.

Meanwhile, Det. Wright discussed with officers the possibility that Mr. Johnson might try to flee, retrieved a "Piranha" tire deflation device,[7] and placed the device under one of the tires of Mr. Johnson's vehicle. The conversation about and placement of the Piranha took less than one minute. Separately, Mr. Johnson asked questions of officers

[5] Ordinarily, a "pick-up order" instructs officers to remove the tags from a vehicle and return them to the Motor Vehicle Administration. This can lead to impounding the vehicle. *See State v. Paynter*, 234 Md. App. 252, 275-76 (2017).

[6] Mr. Johnson provided this information at approximately 12:24 a.m.

[7] Testimony established that a Piranha is a device that is occasionally deployed at traffic stops when the operator of a vehicle is "acting nervous" or if officers fear that the operator is "going to flee[.]" It is placed under a tire of the operator's vehicle and will deflate the tire if the operator attempts to drive over it.

about how to obtain a cell phone that, he alleged, was confiscated from him during the previous traffic stop. This led to two brief discussions between officers, lasting fewer than two minutes in total, about the prior stop and the process for retrieving the phone.

While the search for insurance information was ongoing and before citations were issued to Mr. Johnson, a K-9 unit arrived on the scene.[8] By this time, Det. Wright was close to completing the citations, but had not yet finished. Det. Fraser briefly discussed the situation with the K-9 handler and then resumed the search for insurance information:

> [Prosecutor]: Okay. So, once you . . . finished discussing the situation with [the K–9 handler], what did you do next?
>
> [Det. Fraser]: I remained in the vehicle still attempting to find some type of insurance information, just going back through what was on the computer, just making sure I didn't miss anything.

Det. Wright completed the citations and then attempted to print them so that they could be issued to Mr. Johnson.[9] Immediately after pressing "print," Det. Wright left the

[8] The K-9 and handler arrived at 12:26 a.m.

[9] Det. Wright testified that he uses the "E-Tix" system to complete traffic citations. This system can be linked to a printer contained in an officer's police cruiser and allows citations to be printed on-site.

vehicle to assist other officers, but there was a problem with the printer and the citations did not print immediately.[10] Approximately one minute later, the K-9 alerted.[11]

At the conclusion of the traffic stop, Mr. Johnson was cited for, among other things, driving without insurance. Because he was preoccupied with the search for insurance information, Det. Fraser did not observe the K-9 sweep. After the K-9 alerted, however, Det. Fraser saw that officers were beginning to search Mr. Johnson's vehicle. This search uncovered crack cocaine.

II. The Suppression Court's Ruling

At the conclusion of the suppression hearing, the State argued that the initial stop of Mr. Johnson was valid and that it had not concluded by the time of the dog sniff and alert. The State also emphasized that, at the time, Det. Wright was still working to issue citations and Det. Fraser was still investigating Mr. Johnson's insurance.

Mr. Johnson, however, argued that the dog sniff impermissibly added time to the traffic stop.[12] In support, he asserted that the officers' discussion of Mr. Johnson's phone added "a measurable amount of time[,]" as did Det. Wright's decision to obtain and

[10] Det. Wright pressed "print" at 12:28 a.m. He further testified that, had he remained in the vehicle after pressing "print" and noticed that the print job did not complete, it would have taken him "approximately[] a couple minutes" to realize that the citations had not printed, re-print them, and then ready them to be issued to Mr. Johnson.

[11] The alert occurred at 12:29 a.m.

[12] He also argued more generally that officers "added time to the stop" for purposes other than conducting a dog sniff by taking actions "that were just generally not in service of the traffic stop."

deploy the Piranha device to prevent an escape attempt by Mr. Johnson. More specifically, he argued that the Piranha was deployed to facilitate the upcoming dog sweep, rather than for a purpose relevant to the traffic stop. He also asserted that Det. Wright's decision to assist with the K-9 sweep (after beginning to print the citations) impermissibly added about one minute to the traffic stop.

The suppression court then made the following findings and ruling:[13]

> [I]t has been held that the use of . . . a drug sniffing dog is a perfectly legitimate . . . free investigative bonus to a valid traffic stop so long as the traffic stop is still generally in progress when the dog alerts to the presence of narcotics.
>
> So, that indicates to the Court that [there] are two potential issues; whether, first off, this was a valid traffic stop. And I do find that there was reasonable articulable suspicion that crime was afoot . . . to justify the initial stop. And the testimony was that there were no operating tail-lights on the Defendant's vehicle, and that is why the stop was made. So, I believe that that is satisfied.
>
> Now, the . . . second aspect to look at is whether the traffic stop is generally in progress when the dog alerts to the presence of narcotics.
>
> * * *
>
> [T]he stop initially began at 12:11 a.m. By 12:29, . . . the canine sweep had been completed and the K-9 had alerted . . there was approximately 18 minutes and – several seconds.
>
> * * *

[13] Separately, the suppression court also stated that, "[y]ou have to admit, this is not the normal, middle of the day, speeding ticket traffic stop where the operator of the vehicle is unknown to the officers. The officers testified that they had stopped the Defendant in the past and he had had a loaded handgun in the vehicle. So . . . I think it is not unreasonable for them to exercise some precautions."

> The testimony was and the body cam video corroborates that the – Officer Wright was – had hit print [on the citations] essentially while the sweep was taking place. And the dog alerted within seconds, or he was notified. You hear the alert, the sound of – spoken words alert within seconds of the ticket being printed[.]
>
> So certainly, the printing of the citation in the officer's vehicle is not the end of the traffic stop because as the testimony indicated, the ticket has to be carried to the operator of the vehicle, and handed to the operator . . . explained at least briefly. So, that would not have occurred within a matter of – the number of seconds between the hitting of print and the alert. So, the Court finds that there was not an unreasonable delay as a result of the K-9 sweep in the traffic stop.
>
> I don't agree . . . that the actions of placing the Piranha behind a tire were an unreasonable delay in the traffic stop attributable to the K-9 sweep. I don't believe that the discussions about the Defendant requesting his cellphone from an earlier stop, or asking to record this stop on his cellphone were delays that were attributable to the K-9 sweep. So for all of those reasons I am going to deny the Defendant's motion to suppress.

DISCUSSION

I. The Circuit Court Did Not Err In Denying Mr. Johnson's Motion To Suppress.

On appeal, Mr. Johnson no longer presses that Det. Wright's decision to facilitate the dog sweep (after attempting to print the citations) prolonged the traffic stop, and he argues instead that the stop was prolonged because officers unnecessarily engaged in a "time-consuming" investigation into Mr. Johnson's insurance. Mr. Johnson also repeats two of the arguments he made to the suppression court: that deploying the Piranha device and the officers' discussions about Mr. Johnson's phone both impermissibly prolonged the traffic stop.

"When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing[.]" *Washington v. State*, 482 Md. 395, 420 (2022). "We view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion—here, the State—and defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous." *Butler v. State*, 255 Md. App. 477, 487 (2022) (quotations omitted). "[W]e review legal questions *de novo,* and . . . we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14-15 (2016) (quotations omitted).

The Fourth Amendment protects against unreasonable searches and seizures by the government.[14] "When a vehicle lawfully is stopped for a traffic violation, the driver and any passengers are 'seized,' *i.e.*, detained, for the duration of the traffic stop." *Scott v. State*, 247 Md. App. 114, 130 (2020). Vehicle stops and the associated detention of their occupants are permitted so that police can "enforce the laws of the roadway, and . . . investigate the manner of driving with the intent to issue a citation or warning." *Ferris v. State*, 355 Md. 356, 372 (1999).

[14] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Neither party refers to the Maryland Declaration of Rights, and so we do not address it.

So long as a traffic stop "is lawful at its inception and otherwise executed in a reasonable manner," the addition of a dog sniff does not change the constitutional analysis. *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). That is, the Fourth Amendment does not require any separate reasonable suspicion or probable cause to justify a dog sniff during a legitimate traffic stop of reasonable duration—a dog sniff to detect contraband in this context is not considered a search. *Id.* at 408-09; *see also State v. Ofori*, 170 Md. App. 211, 235 (2006) ("Using a dog is accepted as a perfectly legitimate . . . free investigative bonus as long as the traffic stop is still genuinely in progress.").

As such, the potential Fourth Amendment problem in this area is not a search, but a seizure (*i.e.*, the traffic stop): a dog sniff cannot "unnecessarily exceed[] the scope of the original seizure," *Steck v. State*, 239 Md. App. 440, 456 (2018), meaning that the relevant inquiry is whether the dog sniff "adds time to" the traffic stop.[15] *Rodriguez v. United States*, 575 U.S. 348, 357 (2015); *see also Caballes*, 543 U.S. at 407 ("A seizure that is justified solely by the interest in issuing a warning ticket . . . can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."). As such, "[i]f the officer issuing the citation[s] is diligently and 'legitimately still working on

[15] Of course, when the police have reasonable articulable suspicion that the driver "is a drug courier," the analysis is somewhat different. There, police suspicion relates to the presence of drugs, not (only) a traffic violation, and "the most efficacious way to confirm or dispel such a suspicion is to have a K-9 unit brought to the scene[.]" *Jackson v. State*, 190 Md. App. 497, 517 (2010). As such, a reasonable seizure in the context of a drug stop might well last longer than a seizure in a traffic stop, to allow reasonable time for a K-9 to arrive. *See id.* at 517-18. Here, however, the State does not contend that police had reasonable suspicion as to drugs that might support extra time for a K-9 unit.

those citations when the K-9 unit arrives, the traffic stop is still ongoing, and the detention will be considered reasonable[.]'"[16] *Steck*, 239 Md. App. at 457 (quoting *Partlow v. State*, 199 Md. App. 624, 638 (2011)).

Additionally, the amount of time reasonably required for a traffic stop includes more than just issuing a ticket; it encompasses "ordinary inquiries incident to [the] stop[,]" *Caballes*, 543 U.S. at 408, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355. It may also include reasonable actions to ensure officer safety during the stop, given that such stops "are 'especially fraught with danger to police officers.'" *Scott*, 247 Md. App. at 130 (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)). Thus, among other things, police officers may order the driver of a vehicle and any passengers to exit the vehicle during a traffic stop. *Scott*, 247 Md. App. at 130-31; *see also Arizona v. Johnson*, 555 U.S. 323, 330 (2009) ("The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized, we have stressed, if the officers routinely exercise unquestioned command of the situation.") (quotations omitted).

[16] There are also situations, not relevant here, where a traffic stop might reasonably extend beyond the issuance of citations, such that a dog sniff could permissibly occur even after the driver receives a citation. *See Rodriguez*, 575 U.S at 357.

Here, as we have stated, the only issue for our consideration is whether the dog sniff unreasonably added time to Mr. Johnson's traffic stop. We address each of Mr. Johnson's three arguments in turn.

First, Mr. Johnson argues that the officers unreasonably prolonged the investigation of his insurance, which delay added enough time to the traffic stop to allow for the K-9 to arrive. Preliminarily, we conclude that this argument is preserved. Although Mr. Johnson did not press this argument in either his motion to suppress or at the suppression hearing, the State argued at the hearing that the continuing investigation into Mr. Johnson's insurance demonstrated that the traffic stop was not unreasonably prolonged. Mr. Johnson at least pointed out the amount of time it took officers to investigate his insurance, and the suppression court concluded that the traffic stop was still "generally in progress" at the time of the K-9 alert. To be sure, the suppression court did not specifically mention the investigation into Mr. Johnson's insurance, but here that issue was at least implicit in the suppression court's decision. *See* Md. Rule 8-131(a).

Turning to the merits of the argument, the record reflects that the officers conducted the insurance investigation with reasonable diligence. After Mr. Johnson was stopped, officers performed an initial investigation of his insurance, as well as his license and registration. This portion of the stop took approximately 10 minutes, which is well

within the range that has been held reasonable.[17] This stop was atypical. The pick-up order, which was based on an insurance lapse, was for Mr. Johnson's tags. Without proof of insurance, the pick-up order would have required removal of the tags from the vehicle, a step that would have rendered the car undriveable. Further, after 10 minutes had passed, Mr. Johnson provided officers with new information: a possible policy number. This reasonably prompted further investigation (and justified the time for that investigation), and Det. Fraser began searching the new number. The K-9 arrived only a couple minutes later. Det. Fraser also testified that he was still actively involved in confirming the insurance at the time of the dog sniff and alert, and that he did not see the dog sniff occur.[18]

Second, Mr. Johnson argues that deploying the Piranha device unnecessarily prolonged the traffic stop. But as we have discussed, a traffic stop can reasonably entail more than simply issuing a citation. It can include reasonable actions to protect officer safety and to ensure that officers retain "unquestioned command of the situation."

[17] *See, e.g.*, *Steck*, 239 Md. App. at 458 (duration of eight minutes); *Padilla v. State*, 180 Md. App. 210, 224 (2008) (duration of twelve minutes); *United States v. Perez*, 30 F.4th 369, 376 (4th Cir. 2022) (duration of 15 minutes for a more complex traffic stop).

[18] Moreover, immediately before the K-9 arrived, Det. Wright appeared to indicate that he planned to write a citation for "no insurance[,]" a citation that he had not completed while the insurance investigation was still in progress. Det. Wright made this indication before Det. Fraser had finished investigating the policy number that Mr. Johnson provided. If anything, this shows that the officers did not unreasonably delay the search for insurance such that a dog sniff could be accommodated. Instead, they were working diligently to end the traffic stop, even preparing to abandon the effort to investigate Mr. Johnson's insurance, issue a citation based on the existing information, and (presumably) execute the pick-up order once a reasonable investigation had occurred.

Arizona v. Johnson, 555 U.S. at 330. The suppression court determined that deploying the Piranha was part of the traffic stop, not the dog search. We perceive no clear error in the court's factual determination, nor any legal error. Officers knew that Mr. Johnson had been argumentative in a previous traffic stop and had been found with a loaded weapon. Officers also knew that a pick-up order existed for his tags, and it was becoming increasingly likely that Mr. Johnson did not have insurance (notwithstanding the policy number he provided). In these circumstances, a brief delay to deploy the Piranha was a valid part of the traffic stop and did not unreasonably extend the stop.

Third, Mr. Johnson argues that the officers unnecessarily discussed his phone and how to retrieve it, a discussion that impermissibly prolonged the traffic stop. We agree with the State, however, that these discussions were prompted by Mr. Johnson, not police. Only a "delay by police" can be an unreasonable delay. *See Wilkes v. State*, 364 Md. 554, 578 (2001) (quoting *United States v. Mendez*, 118 F.3d 1426, 1429 (10th Cir. 1997)). Because Mr. Johnson created this delay himself by asking officers about his phone, and because officers took only a reasonable time (less than two minutes) to discuss the matter and respond to Mr. Johnson, this delay was not unreasonable.[19]

[19] Further, as the State correctly points out, Det. Wright testified that it would have taken him at least a couple additional minutes to resolve his printing problem and issue citations to Mr. Johnson. Thus, even if we were to subtract the two-minute discussion about Mr. Johnson's phone from the reasonable duration of the traffic stop, the record still indicates that the dog alert would have occurred while the traffic stop was reasonably still in progress.

II. The Circuit Court Did Not Err In Denying Mr. Johnson's Request To Discharge Counsel.

Mr. Johnson next argues that the motions court improperly denied his request to discharge his counsel and postpone his trial date so that he could obtain new counsel. Specifically, he asserts that the circuit court did not give him a sufficient opportunity to explain his disagreement with counsel once he acknowledged that the disagreement concerned only strategy. Thus, he argues, the circuit court did not have a sufficient basis to determine that his reason for requesting discharge of his counsel was not meritorious.

A. Mr. Johnson's Request to Discharge Counsel

In the approximately five months leading up to his trial, Mr. Johnson was represented by counsel from the Office of the Public Defender. On the morning that trial was to start, Mr. Johnson requested a postponement, explaining that he wished to discharge his counsel and retain private counsel instead. In support, Mr. Johnson stated that he disagreed with "a strategy that my attorney will be going forward with today and I am not comfortable with it." He also alleged that he had just discovered the disagreement "last night[.]"

The motions court stated that Mr. Johnson "had lots of time if you wanted to get different counsel" and noted that his case was the "oldest one on the docket." The motions court then asked Mr. Johnson's counsel two times whether she was prepared to go to trial. Mr. Johnson's counsel replied in the affirmative both times.

Mr. Johnson, however, reiterated his request for a postponement, prompting the motions court to explain that a disagreement about trial strategy, without more, was not a

meritorious reason to postpone trial so that he could retain private counsel. The motions court further explained to Mr. Johnson that he could choose to represent himself if he wished to pursue a different strategy at trial:

> [Mr. Johnson]: [I] just was made aware of a strategy that my attorney will be going forward with today and I am not comfortable with it.
>
> [Motions Court]: Okay. Trial strategies are up to Defense Counsel. So you are not always going to agree. I get that part. But they went to law school and they kind of know what the best way to proceed on is based on all the facts in evidence. You don't have to agree with her all the time. If you want to discharge her simply because of trial strategy, I don't find that that is a meritorious reason. So you can discharge her today. I am not going to give you a postponement for extra counsel. You can proceed pro se today if you want to.
>
> But the State's witnesses are here. We are ready for trial. [Your counsel] is ready. So I have a judge waiting. I can send you to trial now or you can represent yourself if you want to let [your counsel] go.

Mr. Johnson then asked if he could detail the specific disagreement that he was having with his counsel over strategy. The motions court advised him not to do that, explaining that "if [the disagreement] was trial strategy, I wouldn't say in open court because [your counsel] is going to represent you." The motions court also asked Mr. Johnson's counsel if her strategy had changed, but Mr. Johnson's counsel declined to reveal her strategy or any changes to it, stating simply that she did not "have anything else to add."

After this discussion, the motions court indicated that it was inclined not to find a meritorious reason for discharging counsel and to deny Mr. Johnson's request for a

postponement. It then offered him an opportunity to discuss the matter with his counsel and decide whether to proceed *pro se*. Mr. Johnson refused the invitation to discuss the issue further with his counsel, and instead asked the motions court what would constitute a meritorious reason for discharging his counsel.

In response, the motions court provided Mr. Johnson with two examples of meritorious reasons for discharging counsel: "[i]f she wasn't prepared [or] if she hadn't done her job." Mr. Johnson, however, did not change his stated reason for seeking to discharge counsel, reiterating only that "[s]he is not doing her job to my liking." The motions court then reminded Mr. Johnson that he could choose to represent himself, but Mr. Johnson refused, stating "I am not going to represent myself. I am trying to hire private counsel." Once he understood that he would not receive a postponement to obtain private counsel, Mr. Johnson indicated that he would proceed to trial represented by his existing counsel.

B. Analysis

When a defendant "expresses a desire to discharge his or her current counsel" before jury selection begins, the circuit court must strictly comply with Maryland Rule 4-215(e).[20] *State v. Graves*, 447 Md. 230, 240-41 (2016) (cleaned up); *see also State v.*

[20] In relevant part, 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

Hardy, 415 Md. 612, 621-22 (2010) ("The provisions of the rule are mandatory[.]"); *Hargett v. State*, 248 Md. App. 492, 502-03 (2020) ("[A] trial court's departure from the requirements of Rule 4-215 constitutes reversible error.") (quotations omitted). We review *de novo* whether Maryland Rule 4-215(e) was triggered and whether the circuit court complied with it. *Graves*, 447 Md. at 240. If the circuit court complies, then the court's "determination that a defendant had no meritorious reason to discharge counsel . . . is reviewed for an abuse of discretion." *Cousins v. State*, 231 Md. App. 417, 438 (2017).

Under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights, a criminal defendant has a right to counsel. As such, indigent defendants who face incarceration have a right to be represented by counsel at the State's expense. *See Gideon v. Wainwright*, 372 U.S. 335 (1963). But the right to counsel has several limits that are relevant here. An indigent defendant does not have a "right to select the appointed counsel of his or her choice." *Cousins*, 231 Md. App. at 436; *see also Fowlkes v. State*, 311 Md. 586, 605 (1988) ("[F]or indigent defendants . . ., the right to counsel is

> 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[.]

but a right to effective legal representation; it is not a right to representation by any particular attorney."). Defendants also do not enjoy "an unfettered right to discharge current counsel and demand different counsel shortly before or at trial. . . . [or] frustrate the orderly administration of criminal justice." *Fowlkes*, 311 Md. at 605.

The right to counsel not only protects a defendant's right to effective legal representation, it "also protects a defendant's decision to proceed *pro se*." *Dykes v. State*, 444 Md. 642, 648-49 (2015). As such, a court cannot "force a lawyer upon [a defendant] . . . when he insists that he wants to conduct his own defense."[21] *Faretta v. California*, 422 U.S. 806, 807, 819 (1975). Because this right of self-representation necessarily entails a waiver of the right to counsel, a defendant must "clearly and unequivocally" assert the right of self-representation to invoke it. *Pinkney v. State*, 427 Md. 77, 95 (2012). Specifically, a defendant must make some statement "from which the court could reasonably conclude that the defendant desired self-representation[.]" *Id.* at 96 (quoting *Snead v. State*, 286 Md. 122, 127 (1979). Additionally, the court need not "advise the defendant of the option of invoking the right to self-representation"—even when the court refuses to allow the defendant to discharge counsel. *Pinkney*, 427 Md. at 95.

[21] Of course, a court *can* require a defendant to proceed with existing counsel when the defendant does not have a meritorious reason for discharging counsel, nor has indicated any desire for self-representation. *See Pinkney v. State*, 427 Md. 77, 98 (2012) (quoting *Fowlkes*, 311 Md. at 604 n.7) ("[W]here the trial court refuses to permit the discharge of counsel, and when the defendant has said nothing indicating a desire for self-representation, courts have consistently held that the defendant cannot later successfully contend that he was denied his *Faretta* right of self-representation[.]").

In Maryland, Rule 4-215 implements these rights and governs defendants' decisions to discharge counsel and obtain new counsel or opt for self-representation. The rule also "incorporates safeguards to ensure that the defendant is acting knowingly and voluntarily[.]" *Dykes*, 444 Md. at 651. In so doing, Maryland Rule 4-215(e) "establishes a three-step process." *Hargett*, 248 Md. App. at 508.

First, when a defendant requests that counsel be discharged, the court must "permit the defendant to explain the reasons for the request." Md. Rule 4-215(e). We have held that this means the defendant must receive a "reasonable opportunity" to do so, *Bey v. State*, 228 Md. App. 521, 534 (2016), meaning that the defendant must be permitted to give an explanation that is "sufficient to allow the court to determine whether the reason is meritorious[,]" *Moore v. State*, 331 Md. 179, 186 (1993) (quotations omitted). "[T]he rule does not require the conduct of an inquiry in any particular form," but a court "may not ignore" relevant information—instead, the court has an obligation to pursue relevant information with reasonable inquiry. *See id.* at 187.

Second, the court must evaluate whether the reason is meritorious. *Hargett*, 248 Md. App. at 508. Relevant here, we have categorically held that a "disagreement regarding legal strategy is not . . . a meritorious reason to discharge counsel." *Cousins*, 231 Md. App. at 443 (citing cases). Nevertheless, if the disagreement is part of a larger breakdown in the attorney–client relationship, such that the defendant and counsel have become "so at odds as to prevent presentation of an adequate defense[,]" then the reason for discharge might well be meritorious. *See id.* (quotation omitted). But this is a high

bar, and we have held that the dispute between defendant and counsel did not rise to such a level when counsel nevertheless represented a willingness to try the case.[22] *Id.*

Third, if the request is meritorious, the court must permit the discharge of counsel, continue the case if necessary, and advise the defendant that self-representation may be required if new counsel is not retained by the next scheduled trial date. Md. Rule 4-215(e). If the request is not meritorious, the court may reject the request to dismiss counsel, or "may still permit dismissal of counsel, but only after warning the defendant [that] he or she will proceed *pro se* if substitute counsel is not secured." *State v. Brown*, 342 Md. 404, 425 (1996).

Applying those principles here, we find no error in the circuit court's compliance with Maryland Rule 4-215(e), nor any abuse of discretion in its determination that Mr. Johnson's reason for seeking discharge of his counsel was not meritorious. On appeal, Mr. Johnson challenges the motions court's decision on only a single basis: that he was not given an adequate opportunity to explain the reasons for his request to discharge counsel. Put differently, he does not argue that he had a meritorious reason to discharge counsel, nor does he suggest what a meritorious reason might have been here. Instead, his argument centers simply on the level of inquiry that the motions court performed in

[22] Indeed, in *Cousins*, we held that the request to discharge counsel because of a breakdown in relations was not meritorious even though, among other things, the defendant disagreed with his counsel's trial strategy, filed a "groundless" grievance against his counsel, "cussed . . . out" his counsel, and finally refused to be represented by his counsel, instead opting to represent himself at trial. *Cousins*, 231 Md. App. at 430-32, 443-45.

denying his motion. In essence, he contends that the court ruled too quickly, placing undue emphasis on concerns of judicial administration without giving him a reasonable opportunity to elaborate on his motion.

Having reviewed the record, however, we disagree with Mr. Johnson that the motions court failed to follow the requirements of Maryland Rule 4-215(e). At the outset of the hearing, Mr. Johnson explained that his dispute with counsel concerned "a strategy that my attorney will be going forward with today"—meaning a strategy that would be implemented *during trial*. Because trial strategy is, categorically, a non-meritorious reason to discharge counsel, the motions court indicated that it was not inclined to grant Mr. Johnson's motion "simply because of trial strategy[.]" After explaining that trial strategy was not a meritorious reason, and in response to further inquiry by Mr. Johnson, the court also provided him with two examples of potentially meritorious reasons. This gave Mr. Johnson an opportunity to refine his presentation to the court, and perhaps to correct his previous error of speech if he had instead meant to base his motion on something other than trial strategy. Nevertheless, Mr. Johnson did not change his reason for seeking discharge of his counsel, leaving the court with no indication that there was a meritorious reason for his request.

Moreover, the motions court also asked Mr. Johnson's counsel if she was prepared and whether she had recently changed her strategy. In response, counsel indicated twice that she was ready to try the case, and there is no suggestion in the record (or assertion by Mr. Johnson) that he and his counsel had become so at odds as to prevent the presentation

of an adequate defense. Further, even though the motions court was not required to do so, it advised Mr. Johnson that he could represent himself, and it offered to give him some time to discuss the issue with counsel. Mr. Johnson refused both options.

To be sure, Mr. Johnson also raises some concerns on appeal that give us pause. At times, the record shows that the motions court talked over Mr. Johnson, and it telegraphed early-on that it was not inclined to grant Mr. Johnson's request. Likewise, the motions court did not provide Mr. Johnson with the sorts of reassurances and open-ended questions that have been approved in other cases. *See, e.g.*, *Hargett,* 248 Md. App. at 508 ("All right. I'm listening."); *Cousins*, 231 Md. App. at 437-38 (questioning defendant about whether there were "any other complaints" or "anything else"). Nevertheless, the motions court had enough information here to determine that Mr. Johnson's dispute with counsel concerned trial strategy, not more. Under these circumstances, we conclude that the motions court afforded Mr. Johnson a reasonable opportunity to be heard on his motion to discharge counsel.[23]

[23] We briefly address two related contentions that Mr. Johnson forwards. First, he takes issue with the motions court's mention of judicial administration concerns. Although the motions court did state, among other things, that Mr. Johnson made his motion on the morning of trial, that there were judges ready for trial, and that his case was the oldest on the docket, those sorts of concerns are not impermissible. The Supreme Court has indicated that a defendant does not have an "unfettered right to discharge current counsel and demand different counsel shortly before or at trial. . . . [or] frustrate the orderly administration of criminal justice." *Fowlkes,* 311 Md. at 605. Thus, the timing of a defendant's request (and its implications for judicial administration) could bear upon relevant issues under Maryland Rule 4-215(e), including the defendant's credibility in making the request to discharge counsel. *See, e.g.*, *Cousins*, 231 Md. App. at 439 (noting

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

that a defendant cannot "manipulate" the right to counsel and concluding that the defendant was "attempt[ing] to manipulate the proceedings against him.").

Second, we do not hold that the motions court was required to hear Mr. Johnson's precise dispute with counsel over trial strategy before deciding his motion, at least on this record. We can understand Mr. Johnson's desire to be heard on the exact point of strategic disagreement. But even though asking him for more detail would have ensured that Mr. Johnson really meant to refer to trial strategy—and not some meritorious reason for discharging counsel—that same goal was accomplished here by less intrusive means: the court explained to Mr. Johnson that trial strategy was not a meritorious reason, and it provided two examples of meritorious reasons. Thus, Mr. Johnson could have refined his presentation to the court if he meant something else, but he did not do so. We hesitate to read Maryland Rule 4-215(e) as *requiring* the court—and, necessarily, the prosecutor—to hear the specifics of a trial strategy dispute immediately before trial, thereby receiving advance notice of, and possibly some insight into, the defense's strategy. *Cf. Bey*, 228 Md. App. at 530-34 (discussing trial strategy that had *already* been implemented, in the context of a mid-trial motion to discharge counsel).