Circuit Court for Wicomico County
Case No. C-22-CR-21-000370

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 969

September Term, 2022

JOSE GONZALEZ-RUPERTO

v.

STATE OF MARYLAND

Berger,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 22, 2023

On June 7, 2022, a jury, sitting in the Circuit Court for Wicomico County, convicted the appellant, Jose Gonzalez-Ruperto, of first- and second-degree assault, second-degree assault on an inmate or employee of the Department of Corrections ("DOC"), as well as reckless endangerment.[1] Approximately one month later, the court sentenced Gonzalez-Ruperto to 25 years' incarceration, all but 12 years suspended, for first-degree assault, and five years' post-release probation. The court merged the remaining convictions for sentencing purposes.

Gonzalez-Ruperto timely appealed and presents the following two questions for our review:

> I. Did the circuit court err by denying [Gonzalez-Ruperto's] request to discharge counsel, and, alternatively, did the circuit court err by not granting a continuance?
>
> II. Did the circuit court err in denying defense counsel's motion for mistrial after the State suggested to the jury that [Gonzalez-Ruperto] engaged in prior fights in jail?

We answer both questions in the negative and will therefore affirm the judgments of the circuit court.

[1] Gonzalez-Ruperto was also charged with, but acquitted of, attempted second-degree murder and three conspiracy counts.

BACKGROUND[2]

Gonzalez-Ruperto's convictions in this case arose from a violent altercation that occurred at the Wicomico County Detention Center ("WCDC"), where he was incarcerated while awaiting trial in an unrelated case on July 23, 2021. At approximately 8:04 that morning, Lieutenant Anthony Dickerson, a shift supervisor at the WCDC, received a radio call requesting that all available correctional officers respond to "C Block." Upon arriving at C Block, Lieutenant Dickerson joined a group of between six and nine other officers gathered around the window and door to "B Pod."[3] Through the window, Lieutenant Dickerson observed two inmates, whom he identified as Robert Hammond and Gonzalez-Ruperto, standing in B Pod's dayroom, as well as a third inmate, Kyle Carey, lying on the floor. He then witnessed Gonzalez-Ruperto bludgeon Carey twice with a push broom. Lieutenant Dickerson ordered Gonzalez-Ruperto to drop the broom. Although he apparently complied, Gonzalez-Ruperto began punching Carey.

[2] As Gonzalez-Ruperto does not challenge the sufficiency of the evidence, and a detailed recitation of the underlying facts is unnecessary to the resolution of this appeal, we will provide only a brief summary of the facts adduced at trial to provide context for our discussion of the questions presented. *Compare Thomas v. State*, 454 Md. 495, 498-99 (2017) ("Because the issue dispositive of this appeal does not require a detailed recitation of the facts, we include only a brief summary of the underlying evidence that was established at trial"), *with Washington v. State*, 180 Md. App. 458, 461 n.2 (2008) ("Appellant has not challenged evidentiary sufficiency. Therefore, we recite only the portions of the trial evidence necessary to provide a context for our discussion of the issues presented.").

[3] At trial, Lieutenant Dickerson explained that C Block is divided into six alphabetically designated pods, each of which contains several jail cells.

After a fellow correctional officer deployed pepper spray into the pod "through the tray slot on the . . . pod door," Lieutenant Dickerson ordered the other inmates to return to their cells and "lock in." Lieutenant Dickerson then directed the pod control officer to unlock the dayroom door. Once the door had been opened, Lieutenant Dickerson entered the dayroom, approached Gonzalez-Ruperto with his taser drawn, and ordered him to exit the pod. Gonzalez-Ruperto complied and was escorted from B Pod by another officer. Lieutenant Dickerson requested medical assistance on behalf of Carey, who was still lying, apparently unconscious, on the floor.

Amanda Swift, a registered nurse employed by the WCDC, was among the medical personnel to respond to the scene. Upon her arrival, Ms. Swift saw Carey "sitting against the wall." He was initially "alert and oriented, but . . . confused about the events that [had taken] place." Ms. Swift observed that Carey had suffered a small laceration to his left hand and "[h]is eyes were, basically, swollen shut[.]" As she treated Carey, Ms. Swift noticed that his "alertness was deteriorating," such that he "started to droop his head, . . . his eyes started to shut completely, and he wasn't engaging in conversation . . . like he [had been] previously."

Video surveillance cameras captured the inmate altercation. Footage from those cameras was introduced at trial and depicts Carey and Gonzalez-Ruperto exiting their respective cells at 8:02 a.m. Seconds later, Gonzalez-Ruperto can be seen following Carey as he descended the stairs into B Pod's dayroom. When he had reached the bottom of the

staircase, Carey abruptly turned toward Gonzalez-Ruperto and struck him. Carey then backed away from Gonzalez-Ruperto. Gonzalez-Ruperto, however, approached Carey and punched him in the face. After recoiling from that blow, Carey began to walk past Gonzalez-Ruperto when Hammond, who had been watching the altercation, hit him from behind. During the ensuing two-against-one brawl, Hammond retrieved a broom and, as Gonzalez-Ruperto and Carey fought, swung it at Carey.[4] Gonzalez-Ruperto then forced Carey to the floor, where he remained while Gonzalez-Ruperto threw a barrage of punches to his head. After landing approximately two dozen punches, Gonzalez-Ruperto retrieved the broom, used it to strike Carey twice, and resumed punching him until the correctional officers entered the dayroom, whereupon he turned and walked away. The officers escorted both Hammond and him from the room.

We shall include additional facts as necessary to our resolution of the issues.

DISCUSSION

I.

A. Parties' Contentions

Gonzalez-Ruperto contends that the circuit court committed reversible error by denying his request to discharge David O. Weck, the assistant public defender ("APD") who substituted his appearance for that of Tamika Fultz, the APD whom the Office of the

[4] It is unclear from the surveillance footage whether the broom initially made contact with Carey.

Public Defender ("OPD") initially assigned to this case. Gonzalez-Ruperto claims that the court "improperly considered the fact that [the] OPD had already replaced [Ms.] Fultz with [Mr.] Weck." Had the court appreciated the circumstances under which Mr. Weck entered his appearance as substitute counsel, he speculates, it "may very well have been more receptive to . . . Gonzalez-Ruperto's grounds for firing [him]." Alternatively, Gonzalez-Ruperto asserts that the court abused its discretion by denying his motion for a continuance.

The State counters that "[t]he only issue before the trial court was whether there was a meritorious reason to discharge [Mr.] Weck"—and not whether there had been a meritorious reason to discharge Ms. Fultz. When making its ruling, the State reasons, "the court focused on the various reasons Gonzalez-Ruperto gave for wanting to discharge [Mr.] Weck, which were entirely unrelated to his previous counsel, and found that they were not meritorious." Thus, the State concludes that "[t]he court considered each of the reasons Gonzalez-Ruperto gave for wanting to discharge counsel[] and . . . properly exercised its discretion when it found that there was no meritorious reason." We agree with the State.

B. Pertinent Procedural History

On September 21, 2021, Ms. Fultz, who was already Gonzalez-Ruperto's attorney of record in Case No. 284, entered her appearance on his behalf in the instant case. The circuit court, Judge Kathleen L. Beckstead presiding, held a motions hearing in Case No.

284 on November 4, 2021.[5] At that hearing, Ms. Fultz advised the court that Gonzalez-Ruperto wished to discharge her as his attorney in both criminal cases. Addressing the court, Gonzalez-Ruperto explained that, in Case No. 284, Ms. Fultz had both failed to provide him with discovery materials and presented him with an expired, nearly two-month-old plea offer the day before the hearing. Ms. Fultz elaborated:

> Your Honor, what he's saying is that he received a copy of a plea offer yesterday[.]
>
> * * *
>
> I had to ask the State to resend it because the case number on the original plea offer was not his case number, and I didn't want there to be any issues. So[,] he received his plea offer.
>
> * * *
>
> With regard to the discovery, the State did send it electronically back in July. About two weeks ago[,] I realized I didn't have everything. Because once it's transferred to us electronically, my secretary processes it. My office manager attempted to help me get it, and the only thing we had was a true test copy of a prior conviction.
>
> So[,] I had to ask the State to resend it. They did that, and I have the discovery. And I received it in a hard format on Monday. My office manager will be back in the office tomorrow. It will be mailed to him tomorrow.

[5] We exercise our discretion to take judicial notice of the record in Case No. 284. *See* Md. Rule 5-201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). *See also Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) (taking judicial notice of docket entries available on the Maryland Judiciary website pursuant to Maryland Rule 5-201), *aff'd*, 452 Md. 663 (2017).

The court determined that, in Case No. 284, "there may be a meritorious reason for discharge of counsel . . . , given the fact that the discovery has been made available to the [d]efense for a long time . . . in the case ending 284." Accordingly, the court scheduled a status of counsel hearing for November 24, 2021, "[i]n this case and this case only, the case ending 284[.]" Prior to that hearing, however, Mr. Weck entered his appearance as substitute counsel for Gonzalez-Ruperto in both cases on November 18.[6]

On the first day of trial, but prior to jury selection, Gonzalez-Ruperto advised the court that he wished to discharge Mr. Weck, claiming that he had rendered ineffective assistance of counsel when representing him in a prior criminal case that culminated in his conviction. Specifically, Gonzalez-Ruperto asserted that Mr. Weck had failed to object or request a mistrial after a juror or jurors had purportedly fallen asleep during trial. He then requested that the court grant a continuance to afford him an opportunity to obtain substitute representation. Mr. Weck responded:

> I don't believe that I provided ineffective assistance of counsel[.] [H]aving previously gone to trial and lost, it does not surprise me that Mr. Gonzalez-Ruperto could . . . lack confidence about my representation[.]
>
> * * *
>
> So I'm not . . . flabbergasted . . . , but not because I think that I was ineffective, because we didn't win. [I]f I had proceeded to trial with counsel and had not won, I would, . . .

[6] Mr. Weck represented Gonzalez-Ruperto at a trial in Case No. 284 on December 21, 2021, which culminated in a jury convicting him of seven of the fourteen crimes with which he was charged.

> on some level[,] have concerns about whether . . . that same result might occur[.]

According to Gonzalez-Ruperto, Mr. Weck informed him that he had not moved for a mistrial in the prior proceeding because he believed that they were "winning" the case. Gonzalez-Ruperto also expressed concerns regarding Mr. Weck's performance in the present case, claiming that they had met only once a few weeks prior for approximately 15-20 minutes, during which time they watched the surveillance video footage showing the July 23 altercation.

The court asked Gonzalez-Ruperto whether there were "any other reasons . . . why [he] want[ed] to discharge [defense] counsel[.]" Gonzalez-Ruperto answered that when he alerted Mr. Weck that jurors were asleep at his prior trial, Mr. Weck merely requested that the court rouse the jurors from their slumber—rather than seek a mistrial. The court recapitulated:

> [S]o[,] you brought up two different issues. I've heard thoroughly – I've heard about this issue about you witnessed a juror asleep. You pointed out to Mr. Weck. You expected him to take certain actions, but he didn't take those actions[.]
>
> ***** ***** *****
>
> And then with regard to the second issue, you said you have questions about your mental health.
>
> THE DEFENDANT: Yeah.
>
> THE COURT: And the paperwork. Tell me about that. What, if anything, do you want to tell me about that[?]

Gonzalez-Ruperto, for whom English was a second language, responded:

> [T]hey found me with symptoms in my – in here, and I ask[ed] him if like if – if I can get – bring that to court about my paperwork. I got it right here. And – and it's like he no can tell me yes or no. Like – it's like it's no answer about – no, I don't got no answer on anything.

Addressing Mr. Weck, the court asked whether Gonzalez-Ruperto and he had appeared at a pretrial conference before Judge Kathleen L. Beckstead. When Mr. Weck answered in the affirmative, the court asked Gonzalez-Ruperto why he had not raised these issues at that time. Gonzalez-Ruperto replied that he wrote unanswered letters to the OPD after discharging Ms. Fultz because she had allegedly "come to [him] with . . . [an] expire[d] plea barg[ain]" and did not furnish him with discovery. Gonzalez-Ruperto then explained that he did not raise his concerns regarding Mr. Weck's representation at the pretrial conference because he thought that he was required to present them directly to the trial judge.

Turning to Mr. Weck, the court asked: "[W]hat, if anything, would you like to tell me on the record?" Mr. Weck answered, in pertinent part:

> [W]e are dealing with this on the day of trial, but so the record is clear because I don't know that it would be in the abstract, multiple juries were brought in today, so it is not[,] as a practical matter[,] as inconvenient for the County and the judicial process as it would be if this were the only jury brought in.

* * *

I'm not surprised that Mr. Gonzalez-Ruperto would, . . . in the abstract[,] theoretically lack confidence because we had a trial, and I did not win. So[,] that's not . . . surprising to me.

The words, ["]I don't want you to be my lawyer["] I'm hearing for the first time today, but the expression of concern about my advocacy at the earlier trial is something that has been previously relayed to me. So[,] I want to make it clear, he has said that to me regarding the juror and/or jurors who were not being as attentive as they should be.

With respect to my representation in this case, I feel that we have had a sufficient amount of time to discuss what the defense as it relates to the case is. I think Mr. Gonzalez-Ruperto has indicated he feels otherwise. We are scheduled for two days, and so if it is a matter of discussion, I don't believe that there are independent witnesses who he wanted subpoenaed. So[,] if the court were willing to afford additional time for consultation, at least consultation could transpire [prior] to proceeding to trial.

I don't know if that would be a half-hour conversation, a two-hour conversation. I would like to think that anything that my client doesn't feel has been explained could then be explained to him, though I believe those things have been explained.

I believed prior to today that we both realized that the defense that was going to be utilized was a defense of self-defense. My understanding based upon previous conversations was . . . that we were going to be arguing that in part a failure on the part of corrections officers to intervene prolonged the altercation between [my] client and the alleged victim.

So[,] the events in question in terms of the actions, the actus reus of the crime, the actual things that are supposed to have happened are captured on video. That video has been reviewed with my client[,] so there isn't any sort of misunderstanding about what it is the State thinks happened or what we believe happened.

* * *

> Given the severity of the case, I am confident that I can secure other counsel for Mr. Gonzalez-Ruperto[,] but . . . whoever that individual would be . . . would not be prepared to try the case today.
>
> My recollection is there was someone who was not being sufficiently attentive, sleeping or something less than what they should have been at the previous trial. My recollection is it was as Mr. Gonzalez-Ruperto said, I brought it to the attention of the [c]ourt.

* * *

> I don't really want to put Mr. Gonzalez-Ruperto in a position where he is proceeding to trial in a case this serious under circumstances where he lacks confidence in his counsel not without any cause, because we previously had a trial and I didn't win.
>
> It is a mere – I shouldn't say mere because there are lots of people involved but is an inconvenience to not proceed today. It's not going to ruin the administration of justice if a delay is secured.

* * *

> And I will make sure that he has other counsel, but it's not going to be ad infinitum. At least, that other counsel will not have represented Mr. Gonzalez-Ruperto and not won.

Addressing the State, the court asked whether it had anything additional to contribute. The State answered:

> I would just note that[,] as I believe Mr. Gonzalez-Ruperto had said, there was prior counsel in this case, and it was addressed

> early on [sic] his concerns with the representation from the [OPD].
>
> I believe a hearing was held in front of Judge Beckstead where she then had requested that the [OPD] appoint new counsel from their office. So[,] the State . . . ha[s] concerns about the fact that this would be the second time.
>
> Mr. Weck knows the policies of the [OPD] better than I do, if they would appoint yet another.
>
> But he and I have had multiple conversations regarding this case, plea offers, and things of that nature. From my perspective, . . . he is well-prepared to handle the case, but I understand the concerns.

Before the court announced its ruling on the request to discharge counsel, Mr. Weck moved for a continuance on Gonzalez-Ruperto's behalf.

Mindful that "Maryland Rule 4-215 require[d it] to be very specific in its findings," the court fastidiously articulated its rationale for denying Gonzalez-Ruperto's request:

> Mr. Jose Luis Gonzalez-Ruperto appears before me charged with several serious charges including: attempted second degree murder which carries a max penalty of 30 years[;] assault first degree which carries a max penalty of 25 years; reckless endangerment which carries a max penalty of 5 years and a $5,000 fine; assault second degree which carries a 10-year penalty and $25,000 fine; and assault upon a DOC employee which carries a max penalty of 10 years and $2500 fine.
>
> So[,] he is facing very serious charges and lengthy sentences including attempted second degree murder.
>
> Mr. Jose Luis Gonzalez-Ruperto had a trial in which Mr. David Owen Weck was his counsel. That trial didn't go as

Mr. Jose Gonzalez-Ruperto would have liked in that he was convicted.

I'm not sure of what he was convicted of. That hasn't been made part of the record, but he noted that during that trial he said that he saw a juror nodded off or sleeping, and he . . . brought that to the attention of . . . David Weck. David Weck, Esquire, stated that he informed the [c]ourt of this situation, not really sure of the resolution.

But in any event, Mr. Jose Luis Gonzalez-Ruperto was not happy, stating that he was not looking out for his best interest, and he is concerned that Mr. Weck is not looking out for his best interest in this case.

He also complained that Mr. Weck did not give him a sufficient amount of his time to prepare a defense for this case. So[,] there were some concerns about that. He says that he has other thoughts about this case that he has not had the opportunity to share with Mr. Weck.

Additionally, he stated that he had some other concerns about his paperwork related to his mental health and how that would impact this case and his defense.

* * *

Mr. Weck stated . . . that he believes that he has dedicated a sufficient amount of time to this case. He explained to the [c]ourt what . . . the theory of the case is for the defense.

So[,] he has developed a theory of the case. This case is set up for two days, so there is additional time for consultation in a dynamic fashion which happens in every trial. These cases are dynamic, and there is organic give and take between a client and the attorney[.]

* * *

> And then the defense is self defense. There is also a defense of failure of the corrections officers to allow sort of a prolonged fight to go on is what I gleaned. So[,] Mr. Weck has a theory of the case, and he . . . also seems to have shared salient aspects of the discovery with the defendant including the video that has been . . . reviewed by attorney and client.
>
> I understand that he has had Mr. Weck as his attorney before. I'd note for the record, this is the second attorney that has been provided for Mr. Jose Luis Gonzalez-Ruperto by the [OPD].
>
> Ms. Fultz was representing him. She was discharged. Mr. Weck is standing in for h[er]. That is a very unique situation. My understanding is, ordinarily, the [OPD] does not grant a second [APD] for a defendant upon discharge. But, again, he sits here in the unique position that he has a second attorney provided for by the [OPD].
>
> This case is scheduled for trial. He had a pretrial conference. He also had a competency hearing, NCR hearing, full and fair, I believe. And the State is ready, willing, and able to proceed today, has a long witness list. The witness list will be made part of the record later.[7]
>
> There are witnesses that are on their way to court. We have 50 some jurors that have been sitting down. They checked in early this morning. It is now almost 45 after. This voir dire was supposed to start at 9:00.
>
> We have pretrial conference in order to allay and obviate the need for this type of protracted hearing before we have a jury trial. This issue was not raised before the judge.
>
> Right now, based upon what you have told me, Mr. Gonzalez-Ruperto and your attorney's explanations here, I find you're facing serious charges. Okay? And that there doesn't se[e]m to be what I believe to be a legally meritorious reason

[7] The State's witness list contained the names of 11 prospective witnesses.

for your request to discharge your counsel. I think these are things that can be worked out through other measures. So[,] if you happen to see a juror member sleeping during this process, you can give a signal . . . to Mr. Weck on the record, and we will deal with that issue.

I think there is additional time for you to talk to Mr. Weck about your other concerns, even real time while you have witnesses, he'll – and his practice because I observed him in many trials along with the other lawyers, ordinarily, it's a practice before they stop questioning, they hit the do not record button, and they'll ask you, are there any additional questions, anything else?

So, again, my experience, which I don't think I can divorce myself from is that Mr. Weck is pretty collaborative on that aspect.

* * *

[S]o[,] I find that there is no meritorious reason. And Rule 4-215 subsection (e) sta[te]s that if I find no meritorious reason that I may not permit discharge of counsel without first informing you . . . , Mr. Jose Luis Ruperto[,] that the trial will proceed as scheduled with the defendant, you, not represented by counsel if you discharge your counsel, and you do not have new counsel today, which I know you don't have.

I want to just go over the spirit and the letter of why attorneys are important. Again, an attorney can be very helpful in a case such as this. They can prepare . . . and represent you. They . . . have been legally trained. You have a prosecutor here that's been legally trained, not only through legal training but through practice and experience in multiple jury trials. So[,] a lawyer is very important [in a case] that has such serious charges.

Before you discharge your counsel, because, again, I would allow you to discharge him, but you'd proceed unrepresented.

When asked whether he wished for Mr. Weck to continue to represent him, Gonzalez-Ruperto answered in the affirmative. At Mr. Weck's request, the court then granted an approximately 10-15 minute recess to afford Gonzalez-Ruperto an opportunity to ask Mr. Weck about "at least two things[.]" When the court reconvened, Mr. Weck renewed his motion for a continuance (on which the court had not yet ruled) to "secure Mr. Gonzalez-Ruperto . . . different counsel[.]" The court denied that motion without explanation.

C. Discharge of Counsel

1. Maryland Rule 4-215(e)

The Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights afford criminal defendants the right to effective assistance of counsel. *See Lopez v. State*, 420 Md. 18, 33 (2011). While those constitutional provisions also entitle indigent defendants to "appointed counsel . . . in . . . criminal case[s] involving incarceration," *Broadwater v. State*, 401 Md. 175, 179 (2007) (quotation marks and citation omitted), they "do[] not afford an indigent defendant the right to select the appointed counsel of his or her choice." *Cousins v. State*, 231 Md. App. 417, 436, *cert. denied*, 453 Md. 13 (2017). Nor do they "'give an accused an unfettered right to discharge current counsel and demand different counsel shortly before or at trial.'" *Id.* (quoting *Fowlkes v. State*, 311 Md. 586, 605 (1988)).

In 1984, the Supreme Court of Maryland promulgated Maryland Rule 4-215(e) as a prophylactic measure to safeguard the right to counsel. *See Pinkney v. State*, 427 Md. 77, 92 (2012) ("Maryland Rule 4-215 was drafted and implemented to protect . . . the right to the assistance of counsel[.]"). That subsection "outlines the procedures a court must follow when a defendant desires to discharge his counsel . . . to substitute counsel," *State v. Campbell*, 385 Md. 616, 628 (2005), and provides, in pertinent part:

> 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.

Md. Rule 4-215(e).

2. Standard of Review

Gonzalez-Ruperto does not dispute that the court complied with the procedural requirements of Rule 4-215. Rather, he challenges the court's finding that his reasons for discharging counsel were unmeritorious. "A trial court's determination that a defendant had no meritorious reason to discharge counsel under Rule 4-215(e) is reviewed for abuse of discretion." *Cousins*, 231 Md. App. at 438. "[A] ruling reviewed under an abuse of

discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks, citation, and emphasis omitted). Rather, a court abuses its discretion "when it acts without reference to any guiding rule or principles and . . . when the court's act is so untenable as to place it beyond the fringe of what the court deems minimally acceptable[.]" *State v. Hardy*, 415 Md. 612, 621-22 (2010) (quotation marks and citations omitted).

When evaluating a defendant's reasons for requesting to discharge counsel, "a trial court may choose to credit or discredit the arguments presented, and after doing so, must use its own judgment in making a ruling." *Cousins*, 231 Md. App. at 444. For purposes of Rule 4-215(e), the Supreme Court of Maryland has equated the term "meritorious" with "for good cause." *See Dykes v. State*, 444 Md. 642, 652 (2015). Good cause "may include a conflict of interest, a complete breakdown of communication or an irreconcilable conflict which leads to an apparently unjust verdict." *State v. Brown*, 342 Md. 404, 415 (1996) (quotation marks and citation omitted). Where, as here, an appellant contends that the trial court "abused its discretion in denying a request to discharge counsel because of a breakdown of communication, a relevant factor is whether appellant and his or her counsel experienced a total lack of communication preventing an adequate defense." *Cousins*, 231 Md. App. at 439 (quotation marks and citations omitted).

3. Analysis

As a preliminary matter, whether Gonzalez-Ruperto was justified in seeking to discharge his former attorney has no bearing on whether he had a meritorious reason for moving to discharge her replacement. While the court noted, in passing, that Mr. Weck was "the second attorney that ha[d] been provided" by the OPD, we are not persuaded, as Gonzalez-Ruperto claims, that the court presumed that he "had already benefitted from receiving a second attorney," thereby making it "more reluctant to provide a third[.]" To the extent that Gonzalez-Ruperto's argument rests on an erroneous premise to the contrary, it fails. What remains of Gonzalez-Ruperto's argument is his tenuous reliance on *Dykes, supra*, and *Weathers v. State*, 231 Md. App. 112 (2016).

Dykes is inapposite to the instant appeal. At a hearing on Dykes' motion to discharge the APD assigned to his case, the trial court, in its discretion, determined that he had "clearly a meritorious reason" to discharge counsel, to wit, the "palpable and obvious distrust that [Dykes] ha[d] with respect to the [OPD] and specific attorneys that ha[d] been assigned to him[.]" *Dykes*, 444 Md at 663. Thereafter, Dykes filed a motion for court-appointed counsel. The court denied that motion, reasoning: "'I do not have the authority to appoint an attorney for you.'" *Id.* at 665 (footnote omitted). In so doing, it erroneously treated Dykes "as someone who had waived his right to counsel, not as someone who had discharged counsel for a meritorious reason, remained an indigent defendant, and was therefore entitled to appointment of counsel." *Id.* at 668 (footnotes omitted). Dykes

proceeded to trial *pro se* and was convicted of first-degree burglary and malicious destruction of property.

On appeal, the Supreme Court of Maryland reversed Dykes' convictions, holding:

> 1. When an indigent defendant asks to discharge appointed counsel and the trial court determines, after conducting the inquiry required by Rule 4–215(e), that the defendant has a meritorious reason to discharge counsel, the decision to discharge counsel is not itself a waiver of appointed counsel.
>
> 2. If an indigent defendant has discharged appointed counsel for a meritorious reason and the [OPD] is unable or unwilling to provide new counsel, the trial court may appoint counsel for that defendant pursuant to its inherent authority.

Id. at 670.

The critical distinction between *Dykes* and the instant case is that here the court determined that Gonzalez-Ruperto lacked a meritorious reason to discharge Mr. Weck. Based on that discretionary determination, the court properly presented Gonzalez-Ruperto with two available alternatives: "continue with current counsel or . . . proceed *pro se*." *Id.* After the court advised him that if he discharged Mr. Weck, he would have to proceed *pro se*, Gonzalez-Ruperto chose the former option. As it had found that Gonzalez-Ruperto lacked a meritorious reason to discharge Mr. Weck, the court in this case proceeded precisely as Rule 4-215(e) prescribes.

Gonzalez-Ruperto's reliance on *Weathers* is also misplaced, as that case is factually distinguishable from the instant matter. In that case, we held that the "court abused its

discretion in finding no meritorious reason for [Weather's] request to discharge counsel" because counsel conceded on the morning of trial that he had failed to discuss the case with his client. 231 Md. App. at 130. We reasoned, in part:

> [A]lthough he had entered an appearance in this case some nine months earlier, *defense counsel admitted that, on the morning of trial, he had not yet discussed this case with appellant*. Instead, [defense counsel] planned on discussing the case with appellant after the first day of trial, which, in this case, did not occur until *after* the jury had been selected and after testimony was received on a motion to suppress the identification of appellant by the victim in this case. This anticipated communication would come too late as it is well established that *voir dire* is a critical stage of a criminal proceeding. Certainly, communication about the details and nature of the case at hand would have informed the jury selection process. And, there is no doubt that any discussion at all also could have helped with the motion to suppress the victim's identification.
>
> Additionally, [defense counsel] conceded that *he had not yet discussed the surveillance video with appellant*. *Indisputably, the video was a key piece of the evidence against appellant.* Contrary to any suggestion otherwise, we question whether defense counsel could truly be prepared when he or she did not discuss the primary evidence in the case with the client prior to the commencement of trial. *We would be presented with a much different case had the court simply granted a brief postponement*, or perhaps simply continued the case until the next day, so that these communications could take place.

Id. at 138-39 (some emphasis added; internal citation omitted).

In contrast to the circumstances in *Weathers*, in this case, Gonzalez-Ruperto and Mr. Weck met several weeks before trial. According to Gonzalez-Ruperto, during that meeting, Mr. Weck and he watched the surveillance video footage that portrayed the actus

rei of the offenses with which he was charged and was a critical piece of incriminating evidence. Although that meeting was relatively brief, Mr. Weck opined that it sufficed to permit Gonzalez-Ruperto and him to discuss the defense theory of the case. Finally, unlike in *Weathers*, the court granted Gonzalez-Ruperto a 10-15 minute recess so that Mr. Weck could answer questions that he wished to pose.

In this case, Gonzalez-Ruperto did not claim that Mr. Weck and he had "experienced a total lack of communication preventing an adequate defense." *Cousins*, 231 Md. App. at 439 (quotation marks and citations omitted). Rather, his allegations merely reflected diminished confidence in Mr. Weck's representation, which, without more, does not amount to a meritorious reason to discharge counsel. *See Weathers*, 231 Md. App. at 135 ("[A]ppellant's 'loss of confidence in his attorney' does not constitute good cause to assign new counsel[.]" (quoting *United States v. Allen*, 789 F.2d 90, 93 (1st. Cir. 1986))). On these facts, therefore, we hold that the court did not abuse its discretion in determining that Gonzalez-Ruperto lacked a meritorious reason to discharge Mr. Weck.

D. Motion for a Continuance

We turn now to Gonzalez-Ruperto's further contention that the court committed reversible error by denying his request for a continuance. On appeal, "the 'party challenging the discretionary ruling on a motion for a postponement has the burden of demonstrating a *clear* abuse of discretion[.]'" *State v. Taylor*, 431 Md. 615, 646 (2013) (quoting *State v. Frazier*, 298 Md. 422, 452 (1984)) (emphasis retained). *See also*

Howard v. State, 440 Md. 427, 441 (2014) ("An appellate court reviews for abuse of discretion a trial court's ruling on a motion to postpone."). In exercising its discretion, a trial court may balance "the 'presumption in favor of a defendant's counsel of choice' . . . against the 'demands of [the court's] calendar,' namely, the need for an 'orderly administration of criminal justice.'" *Taylor*, 431 Md. at 645 (quoting *State v. Goldsberry*, 419 Md. 100, 118 (2011)).

In this case, Gonzalez-Ruperto did not have a "counsel of choice." Rather, in requesting a continuance, he sought the opportunity to obtain an attorney whom he deemed choice worthy.[8] On the other side of the scale, Gonzalez-Ruperto first requested a continuance on the morning of the first day of trial -- at which approximately 50 prospective jurors were called to serve and over ten potential witnesses were subpoenaed to appear and testify. At that point, Mr. Weck had been assigned to Gonzalez-Ruperto's case for more than six months. During that period, Gonzalez-Ruperto appeared at three pretrial conferences -- the last of which was held a mere five days before trial -- but evidently neither moved to discharge Mr. Weck nor requested a continuance during which he could seek alternate representation. On these facts, we cannot say that the court's denial of Gonzalez-Ruperto's eleventh-hour motion for a continuance was so far beyond the fringe of what we deem minimally acceptable as to constitute an abuse of discretion.

[8] In his words, Gonzalez-Ruperto requested to postpone trial until "I get another attorney or either the State can provide me a pro bono or something or other attorney."

II.

A. Parties' Contentions

Gonzalez-Ruperto also asserts that the circuit court abused its discretion by denying his motion for a mistrial after the State asked him on cross-examination whether he had "been involved in any other fights while . . . at WCDC?" Relying on the Supreme Court of Maryland's opinion in *Rainville v. State*, 328 Md. 398 (1992), Gonzalez-Ruperto maintains that the State's question "injected . . . [prior] bad acts/other crimes evidence into the proceedings" and was so unfairly prejudicial that "a mistrial was the only viable remedy."

The State responds that "there was no prejudice to Gonzalez-Ruperto" because he never answered the single, isolated question, and the court's ensuing instruction "was sufficient to cure any minimal prejudice that could have arisen" therefrom. Alternatively, the State argues that "the question itself was not necessarily improper" because it was posed to elicit Gonzalez-Ruperto's mental state at the time of the fray and that his involvement "in 'other fights' does not necessarily equate to a prior crime or bad act[.]" We agree with the State's initial response and need not therefore address its *arguendo* alternative.

B. The Motion for Mistrial

After the State had rested its case, Gonzalez-Ruperto elected to testify on his own behalf. On direct examination, Gonzalez-Ruperto averred that he had been "really scared"

during his fight with Carey, whom Gonzalez-Ruperto described as "too big" while characterizing himself as "not a good fighter[.]" When Mr. Weck asked whether he had "seen other people hurt in jail," Gonzalez-Ruperto answered, in part:

> Yeah.
>
> I see – I see it at earlier in the morning, this dude grab a knife and a stab – you know, the dude, and then he run out his cell and throw the knife. The dude grabbed the knife. The one that got stabbed – gotten killed and killed another one.
>
> Like it's – if the guards don't come through, you got to do what you got to do to protect yourself because nobody going to help you in there.

On cross-examination, the State asked Gonzalez-Ruperto: "Had you been involved in any other fights while you were at WCDC?" Before Gonzalez-Ruperto could answer, Mr. Weck objected. During an ensuing bench conference, the following colloquy occurred:

> THE COURT: Okay.
>
> For the record, basis of your objection?
>
> MR. WECK: It's not relevant.
>
> It's more prejudicial than probative. I don't know the answer, so I can't say anything else objection-wise other than that.
>
> THE COURT: Okay.
>
> All right.
>
> Do you want to proffer and help me understand?

[THE STATE]: While I don't know the answer to that, he has spoken about what he's witnessed before and that he was terrified that guards did not . . . come in to protect or assist him.

So[,] I think it goes to his belief.

MR. WECK: I'm going to move to strike, ask for a mistrial. I don't think there's a good faith basis for that question.

And the only possible explanations are either implying – well, again, I don't know what the answer is.

* * *

MR. WECK: [S]o[,] it's wholly speculative.

But the jury has now heard the possibility, and if he says that he has, that answer is objectionable, which means the question is objectionable.

If he says that he hasn't, then it was irrelevant. So[,] either answer is going to yield inadmissible evidence, and there wasn't a good faith basis to ask it as Madam State said. So[,] I'm objecting, mov[ing] to strike, [and] asking for a mistrial.

[THE STATE]: I can withdraw –

MR. WECK: But I don't know what he's going to say.

[THE STATE]: I can withdraw the question and rephrase to ask about where that stabbing was that he had witnessed –

* * *

[THE STATE]: – had taken place, because I know nothing about that incident –

* * *

> [THE STATE]: – and I'm trying to understand his frame of mind which was what he was discussing from all of the other incidents that he had observed.
>
> THE COURT: Okay.
>
> All right.
>
> So[,] the way I'm going to impact [sic] this is if the State is going to ask about anything that could be a possible prior bad act, ask to approach, allow me to make the balancing test –
>
> * * *
>
> THE COURT: – to determine whether . . . the probative value is outweighed by the danger of unfair prejudice.
>
> I'm going to sustain the objection.
>
> Again, I find this to be . . . speculative, and the probative value outweighed by the danger of unfair prejudice to the defendant in this particular case.
>
> What I'm going to do is I'm going to have the jury disregard the question, and sustain the objection.
>
> I'm going to deny your request for a mistrial. I don't find that there is a manifest necessity – I find that it was a fleeting question, fleeting reference, and that the – it's clear to the [c]ourt from my view that a curative instruction will cure any prejudice that would inured [to] your client.

The court then instructed the jury: "Ladies and gentlemen of the jury, so I have sustained the defendant's objection. The jury will disregard the last question asked by the prosecutor. So[,] you will disregard the last question asked by the prosecutor."

C. Standard of Review and Analysis

Maryland Rule 5-404(b) governs the admissibility of evidence pertaining to "other crimes" or "prior bad acts," and provides:

> Evidence of other crimes [or] wrongs. . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.[9]

The Rule "is designed to prevent the jury from becoming confused by the evidence, from developing a predisposition of the defendant's guilt, [and] from prejudicing their minds against the defendant." *Sifrit v. State*, 383 Md. 116, 132 (2004).

When impermissible evidence is elicited and/or introduced, a trial court need only "declare a mistrial . . . under extraordinary circumstances and where there is a manifest necessity to do so." *Benjamin v. State*, 131 Md. App. 527, 541 (2000) (quotation marks and citation omitted). "[I]n order to determine manifest necessity to declare a mistrial, the trial judge must weigh the unique facts and circumstances of each case, explore reasonable alternatives, and determine that no reasonable alternative exists." *Quinones v. State*, 215 Md. App. 1, 17 (2013). Where, as here, a court gives a curative instruction in lieu of a

[9] Maryland Rule 5-413 states: "In prosecutions for sexually assaultive behavior as defined in Code, Courts Article, § 10-923(a), evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admitted in accordance with § 10-923."

mistrial, "we must determine . . . whether the damage in the form of prejudice to the defendant transcended the curative effect of the instruction." *Coffey v. State*, 100 Md. App. 587, 597 (1994) (quotation marks and citations omitted). The Supreme Court of Maryland has set forth the following non-exhaustive list of factors to aid trial courts in determining whether a mistrial is warranted:

> "[W]hether the reference . . . was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]"

Carter v. State, 366 Md. 574, 590 (2001) (quoting *Rainville*, 328 Md. at 408).

Cautionary instructions are "generally . . . deemed to cure most errors," as "jurors are presumed to follow the court's instructions[.]" *Id.* at 592. *See also Simmons v. State*, 436 Md. 202, 222 (2013) ("[W]hen curative instructions are given, it is generally presumed that the jury can and will follow them . . . the trial judge is in the best position to determine whether his instructions achieved the desired curative effect on the jury." (quotation marks and citation omitted)); *Vaise v. State*, 246 Md. App. 188, 244 ("Generally, inadvertent presentation of inadmissible information may be cured by withdrawal of it and an instruction to the jury to disregard it[.]" (quotation marks and citation omitted)), *cert. denied*, 471 Md. 86 (2020). In order for a curative instruction to obviate the prejudice arising from an improper remark, it "must be timely, accurate, and effective." *Carter*, 366

Md. at 589. Under certain circumstances, however, a timely and accurate curative instruction—even in response to a single, isolated improper statement—is insufficient to ameliorate the danger of unfair prejudice to a defendant. The Supreme Court of Maryland was presented with such circumstances in *Rainville*, the case on which Gonzalez-Ruperto principally relies.

The State charged Rainville in two separate indictments with sexual offenses allegedly committed against seven-year-old Peggy and her nine-year-old brother, Michael. During the jury trial arising from the alleged assault against Peggy, the State asked the children's mother to "describe . . . Peggy's demeanor when she told [her] about the incident." *Rainville*, 328 Md. at 401. The victims' mother answered: "She was very upset. I had noticed for several days a difference in her actions. She came to me and she said where [Rainville] was in jail for what he had done to Michael that she was not afraid to tell me what had happened." *Id.* Defense counsel "immediately objected and moved for a mistrial . . . , arguing that the defendant's case had been 'hopelessly prejudiced.'" *Id.* at 401-02. Although the court denied the mistrial motion, it promptly instructed the jury as follows: "[T]he witness just alluded to some other incident that has nothing to do with this case, and you should not in any way consider what she has said, and you should put it out of your mind and forget about it." *Id.* at 402.

The Supreme Court of Maryland reversed Rainville's convictions and remanded the case for a new trial. While acknowledging that it "was a difficult case," *id.* at 409, the Court

held that "[i]t [wa]s highly probable that the inadmissible evidence in this case had such a devastating and pervasive effect that no curative instruction, no matter how quickly and ably given, could salvage a fair trial for [Rainville]." *Id.* at 411. The Court reasoned:

> Under these circumstances, informing the jury that [Rainville] was "in jail for what he had done to Michael" almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction.
>
> We are not persuaded that the trial judge's curative instruction could be effective under the circumstances of this case.

Id. at 410-11.

This case is clearly distinguishable from *Rainville*. Had Gonzalez-Ruperto answered the State's question in the affirmative, this may be, as was *Rainville*, "a difficult case." *Id.* at 409. However, the question about which Gonzalez-Ruperto now complains did not elicit any testimony—prejudicial or otherwise—as Mr. Weck objected to the State's question before Gonzalez-Ruperto could answer. There was, therefore, no evidence that Gonzalez-Ruperto had been "involved" in any other physical altercations at the WCDC, where the jury already knew full well he had been incarcerated. Granted, an unanswered question or questions may, in some cases, cause such overwhelming unfair prejudice that only a mistrial can cure it. *See Molter v. State*, 201 Md. App. 155, 178 (2011) (*"*The granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances."). *See also United States v. Lamarr*, 75 F.3d 964, 969 (4th

Cir. 1996) ("A mistrial should be granted only if a question so prejudicially affects a defendant's rights that it denies him a fair trial."). The question at issue in this case, however, was not so egregious.

Following the State's single, isolated, and unanswered inquiry into whether Gonzalez-Ruperto had been involved in other physical altercations at the WCDC, the court sustained defense counsel's objection and timely instructed the jury to disregard the question. Under the circumstances in this case, we are persuaded that a curative instruction sufficed to neutralize any prejudice that Gonzalez-Ruperto might otherwise have suffered as a result of the State's question. Accordingly, we hold that the court did not abuse its discretion in denying Gonzalez-Ruperto the extraordinary remedy of a mistrial. *See Greer v. Miller*, 483 U.S. 756, 766 (1987) (holding that a "single question, an immediate objection, and two curative instructions—clearly indicate[d] that the prosecutor's improper question did not violate [the defendant]'s due process rights," and did not therefore warrant a mistrial) (footnote omitted); *United States v. Gramajo*, 565 Fed. Appx. 723, 727 (10th Cir. 2014) (unpublished opinion) (holding that the trial court did not abuse its "discretion in denying a motion for mistrial based on one unanswered question which the district judge immediately instructed the jury to disregard"); *Young v. Bowersox*, 161 F.3d 1159, 1161 (8th Cir. 1998) (holding that the prosecutor's unanswered question to the murder defendant asking "how many people have you shot?" was not so egregious as to warrant a mistrial).

For the foregoing reasons, we affirm the judgments of the circuit court.

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