Circuit Court for Baltimore City
Case No.: 120066001

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1024

September Term, 2023

EPENETUS E. HENRIQUES, JR.

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 7, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

After Epenetus E. Henriques, Jr., appellant, withdrew his plea of "not criminally responsible" ("NCR") in favor of a bench trial, the Circuit Court for Baltimore City convicted him in the fatal stabbing of Isaiah Drummond. Henriques was sentenced to life for first-degree murder and a concurrent three years for carrying a deadly weapon with intent to injure. In this timely appeal, he raises three questions that we restate as follows[1]:

> 1. Did the trial court err in overruling a defense objection to a detective's testimony that he gave Miranda advisements because he suspected that Henriques was involved in Drummond's disappearance?
>
> 2. Did the trial court err or abuse its discretion in accepting Henriques's withdrawal of his NCR plea?
>
> 3. After defense counsel noted it was unlikely that Henriques's family could afford an expert to evaluate his NCR plea, did the trial court err or abuse its discretion in failing to "take action" *sua sponte* to arrange for another evaluation?

Discerning no grounds for reversal, we will affirm Henriques's convictions.

[1] In his brief, Henriques frames the issues as follows:

1. Did the trial court abuse its discretion in overruling a defense objection to a detective's opinion that Appellant is guilty?

2. Did Appellant knowingly elect to withdraw his NCR plea where the trial court provided materially erroneous advice in the colloquy resulting in the waiver?

3. Did the trial court erroneously fail to take action where private defense counsel put on the record the unlikelihood that Appellant's family could afford to hire an expert relating to his plea of NCR?

FACTUAL AND LEGAL BACKGROUND[2]

After texting family members on the morning of January 21, 2020, Isaiah Drummond went missing. At the time, he and Henriques were friends who shared a residence in Baltimore.

Henriques was shot and hospitalized on January 24, 2020. Searching Henriques's car in connection with that shooting, police recovered a cell phone with traces of blood on it, inside a backpack.

After Drummond's family learned of Henriques's shooting, they reported that Drummond had disappeared. Police then identified the cell phone from Henriques's car as belonging to Drummond.

While Henriques was still hospitalized, police searched the residence where Henriques was living with Drummond. Police found a blood-stained kitchen knife, blood-stained clothing, and blood-stained athletic shoes.

The phone, knife, clothing, and shoes were all DNA-linked to Drummond. One shirt yielded a DNA profile matching Henriques and blood from Drummond.

After Henriques was discharged from the hospital, police interviewed him about Drummond's disappearance. Baltimore City Police Detective David Moynihan instructed Henriques to read aloud the written Miranda advisements.[3] When asked why, Detective

[2] Because Henriques does not challenge the sufficiency of the evidence, our summary of the record provides background for the evidentiary and procedural issues briefed by the parties.

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

Moynihan explained that, even though Henriques was not "in custody," he suspected Henriques was involved in Drummond's disappearance and possible death.

During his video-recorded statement over the course of two hours, Henriques appeared to the detective "to be acting normal," although he did say he was the Messiah and "speaks to God directly." Although Henriques initially denied any involvement in the disappearance of Drummond, he eventually confessed to killing Drummond. Henriques claimed that Drummond was trying to kill Henriques by poisoning a meal and that he grabbed a knife. After striking Drummond and wrestling the knife away, Henriques stabbed him once in the neck.

Henriques led police to where he hid Drummond's body, weighted by rocks along the Patapsco River at Splash Park. An autopsy revealed that Drummond, who had no defensive wounds or bruising, sustained seven stab and five cutting wounds in his neck area, including lethal wounds to his jugular vein.

In a hearing announcing its verdicts, the trial court noted that Henriques had withdrawn his NCR plea, without presenting any opinion "that, at the time of the occurrence, that Mr. Henriques was not criminally responsible." The court found that Henriques's belief that Drummond was trying to kill him was not reasonable, that "the number of wounds suggests an intent to kill[,]" and that their "location on the body suggests that those wounds were willful and deliberate." "[T]he fact that the body [was] weighed down, . . . surrounded by rather large rocks is . . . an indication that he intended to conceal that body" and had consciousness of guilt.

The trial judge, stating that she "watched Mr. Henriques" because "competency is a fluid thing[,]" detected "nothing during the course of the trial which suggested . . . that Mr. Henriques was not competent throughout the trial." While noting she is "not the mental health professional[,]" the judge found that Henriques

> engaged with his attorney. He asked questions. I actually used the word granular at one point, and he asked [defense counsel] how to spell the word. So he was definitely engaged and paying attention.
>
> On the day that his grandmother came to court, he was very upset because he told me he hadn't seen her in almost three years. And that is absolutely right on the calendar. He was right. If he had not seen her since the time he was shot, it would have been almost three years.
>
> There was nothing in his demeanor or behavior throughout this trial to suggest that he was not competent throughout the entirety of the trial.

The court then found that

> sometime after January . . . 21st 2020, but before January 24th, 2020, something went terribly wrong when [Drummond] was stabbed in the basement where he lived. And that his friend moved the body and took it to Splash Park. That the killing was willful and deliberate, and that there w[as] certainly an opportunity to stop between number one and number 12, . . . that self-defense does not apply, and that this was no accident.

The trial court next recognized that, in his interview with Detective Moynihan, "Mr. Henriques also talked about CTE" from his football career,[4] but that was "not a sworn statement" and "again, the evaluation did not suggest not criminally responsible." Pointing out that there was no "medical evidence" or "doctors," and that "the only way to diagnose

[4] CTE stands for chronic traumatic encephalopathy, which is a degenerative brain disease caused by repeated trauma to the head. *See CTE*, DICTIONARY.COM, https://www.dictionary.com/browse/CTE [https://perma.cc/H9PC-GMFT] (last visited June 30, 2025). The disease is especially prevalent among military veterans and professional athletes, like American football players. *Id*.

CTE today is through an autopsy[,]" the court found that, "[w]hen asked by the detectives, who I think did a very good job, in response to Mr. Henriques' statement about CTE, Mr. Henriques says no I don't rage like that. That does not happen to me. So there is no mitigation in this case."

Based on this record, the court found Henriques guilty of first-degree murder and carrying a deadly weapon. We will add material from the record in our discussion of the issues raised by Henriques.

LEGAL STANDARDS GOVERNING REVIEW

When an action has been tried without a jury, an "appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

Pertinent to our resolution of this appeal, the framework for an NCR defense separates the determination of guilt on criminal charges from the determination of criminal responsibility for such acts. *See* Md. Code, § 3-109 of the Criminal Procedure Article ("CP"); Md. Rule 4-314(a)-(b). "For the criminal responsibility issue, the burdens of pleading, producing evidence, and persuading the fact-finder that criminal punishment should not be imposed are all borne by the defendant. It is that combination of burdens that make up the burden of proof." *Treece v. State*, 313 Md. 665, 684-85 (1988).

DISCUSSION

I. Objection to Detective's Testimony

Henriques contends that "[t]he trial court abused its discretion in overruling a defense objection to a detective's opinion that [he] is guilty[.]" In support, he cites the following colloquy during the direct examination of Detective Moynihan:

> [PROSECUTOR]: Okay. When you brought him into that interview room, what was the first thing that you did with him?
>
> [DET. MOYNIHAN]: The first thing we did was go over his advice of rights, Miranda warnings.
>
> [PROSECUTOR]: And at that point, would you say he was in custody?
>
> [DET. MOYNIHAN]: No.
>
> [PROSECUTOR]: Was he free to leave?
>
> [DET. MOYNIHAN]: If he had told us at that point that he wanted to leave, then he would have been free to leave. He was not under arrest. No, he was not.
>
> [PROSECUTOR]: **Okay. So what was the purpose of going through Miranda with him?**
>
> [DET. MOYNIHAN]: **I 100 percent believed he had some responsibility for the disappearance. And I now suspected** –
>
> [DEFENSE COUNSEL]: **Objection, Your Honor**.
>
> [DET. MOYNIHAN]: – **death.**
>
> THE COURT: **Overruled.**
>
> [DET. MOYNIHAN]: **Death of the victim. Did I have enough evidence at that point to charge him, the answer would be no. But because I was talking to him as a suspect, definitely went over his Miranda warnings.**
>
> [PROSECUTOR]: Okay. And do you recall when you went over his Miranda rights with him, did you read them to him? Or did he read them to you?

[DET. MOYNIHAN]: He read them to me.

(Emphasis added.)

Henriques contends that "[t]he witness's expressed belief that [he] was responsible for the crime and the death of the victim was improper lay opinion under Md. Rule 5-701[,]" which provides that when a

> witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Md. Rule 5-701. Citing Maryland and North Carolina case law, Henriques argues that "an officer's opinion that the accused is guilty is not helpful to the factfinder." *See Bohnert v. State*, 312 Md. 266, 278-79 (1988) (holding that social worker's expert opinion predicated on child's report of sexual abuse improperly vouched for credibility of witness by implicitly opining that defendant was guilty); *Casey v. State*, 124 Md. App. 331, 338-39 (1999) (holding that police officer's statements during recorded interview of defendant, stating "we know that's not true" and "we know different," were inadmissible opinions regarding defendant's truthfulness); *Snyder v. State*, 104 Md. App. 533, 554 (1995) (holding trial court erred in allowing police officer to testify about questions he wanted to ask defendant "regarding certain 'inconsistencies'"); *State v. Elkins*, 707 S.E.2d 744, 755 (N.C. Ct. App. 2011) (concluding detective's lay opinion testimony that defendant "was, indeed, the offender in this case" violated North Carolina's version of Md. Rule 5-701, but was not "plain error" warranting reversal).

The State responds that the trial court did not err in overruling this objection because the detective's explanation for why he Mirandized Henriques related to a potential voluntariness issue, and therefore was "probative of whether Henriques's subsequent confession was something that the jury (assuming the issue was raised, and the jury instructed) could consider." We agree.

> Appellate review of a trial court's decision to admit evidence over objection
>
> involves a two-step analysis. First, we determine whether the evidence was relevant, which is a conclusion of law that we review de novo. "While trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence."
>
> If we determine that the evidence in question is relevant, we proceed to the second step—whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined by Maryland Rule 5-403. In connection with this second inquiry, "we consider whether the trial court abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial." The second inquiry—the trial judge's discretionary ruling of the admissibility of evidence under Rule 5-403—is subject to the abuse of discretion standard.

Akers v. State, 490 Md. 1, 24-25 (2025) (citations omitted).

As a threshold matter, we do not agree that the detective's statement expressed an impermissible opinion that Henriques was guilty of killing Drummond. To the contrary, Detective Moynihan merely stated his suspicion that Henriques might be involved in Drummond's disappearance and possible death, which is evident by his questioning.

Nor are we persuaded that the trial court erred or abused its discretion in overruling the defense objection to this Miranda inquiry. Such information was relevant to the voluntariness of Henriques's ensuing confession, *see* Md. Rule 5-201, because the court,

sitting as the fact-finder, could not consider Henriques's statement until it found that it was voluntary. *See Zadeh v. State*, 258 Md. App. 547, 617 (2023). Among "the totality of the circumstances" for the court to consider as factors are "where the interrogation was conducted, its length, who was present, how it was conducted, its content," and "whether the defendant was given Miranda warnings[.]" *Hof v. State*, 337 Md. 581, 596 (1995) (citations omitted).

Based on this record, the court credited the detective's testimony that he gave Miranda advisements prophylactically, even though Henriques was not in custody, to ensure that Henriques understood his rights so that any incriminating statement he might make during the ensuing interview would be voluntary and admissible. In turn, that evidence was relevant to both the admissibility and the weight of the State's most incriminating evidence – Henriques's confession to killing Drummond.

The cases cited by Henriques are factually and legally inapposite. In *Bohnert*, 312 Md. at 278-79, the trial court erred in allowing a social worker to vouch for the child she interviewed, because admitting her testimony that she believed the child was sexually assaulted effectively usurped the jury's role in evaluating credibility, by enabling the interviewer to function "as an 'expert in credibility'" or "lie detector" akin to a "polygraph machine." Here, in contrast, the challenged testimony expressed only suspicion that Henriques might be involved in Drummond's disappearance, not the interviewing detective's belief that Henriques was telling the truth or guilty of killing Drummond. In contrast to Detective Moynihan's mere expression of suspicion, the inadmissible statements made by the officers in *Casey* were that "we know that's not true" that "you

don't know anything[.]" *Casey*, 124 Md. App. at 338. Likewise, in *Snyder*, 104 Md. App. at 554, the inadmissible statement revealed the accused's intent to obtain counsel.

Nor does the North Carolina decision cited by Henriques address a comparable scenario. In contrast, the testimony challenged in that case was that "Mr. Elkins was, indeed, the offender in this case." *Elkins*, 707 S.E.2d at 755. While declining to address the issue as plain error, the North Carolina court noted in *dicta* that this "statement is solely and simply an opinion on the ultimate issue of Defendant's guilt[.]" *Id*. Here, in contrast, the challenged testimony merely expressed the detective's reason for Mirandizing Henriques, without identifying him as an "offender" or otherwise expressing any view about his credibility or guilt.

In addition, we agree with the State that admitting the challenged evidence was harmless. "[T]he standard for harmless error analysis in Maryland is whether the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury's verdict." *Gross v. State*, 481 Md. 233, 237 (2022). Courts applying this standard "consider[] the cumulative nature of an erroneously admitted piece of evidence[.]" *Id.* Given the full account of the interview, including Henriques's confession to stabbing Drummond and concealing his body, and the trial court's detailed findings, we are satisfied beyond a reasonable doubt that Detective Moynihan's testimony that he Mirandized Henriques as a "suspect" did not influence these bench verdicts. *Cf. id.* at 265 (holding that erroneous admission of statement regarding child sexual abuse was harmless given cumulative testimony by child victims and DNA evidence).

II. Withdrawal of NCR Plea

Henriques next challenges the trial court's acceptance of his decision to withdraw his NCR plea on the ground that "the trial court provided materially erroneous advice in the colloquy resulting in the waiver." Specifically, he argues that his plea withdrawal was not "knowing" because the trial "court, with the concurrence of both counsel, [mistakenly] stated that a viable NCR theory requires an expert witness[,]" advising him that "I can only let you argue that you were not criminally responsible if there is a doctor's report to say you weren't criminally responsible. There has to be some medical testimony to support it." According to Henriques, the court was "flat wrong" because "Maryland caselaw is clear that lay evidence is relevant and admissible upon the issue of legal sanity, and that rule would be meaningless if such proof alone, as a matter of law, can never sustain the defendant's burden" to prove his lack of criminal responsibility.

The State maintains that "[t]his claim is waived, and should be rejected" on the merits. We agree that neither the law nor the record support Henriques's challenge.

Under CP § 3-109(a),

> (a) A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or an intellectual disability, lacks substantial capacity to:
>
> (1) appreciate the criminality of that conduct; or
>
> (2) conform that conduct to the requirements of law.

Maryland courts have long recognized that a decision of whether to plead NCR belongs to the defendant because

> [t]he potential consequences, to the defendant, of a plea of not criminally responsible are grave and far-reaching. In a free society an individual faced with a choice of this sort should be allowed to make it and to live with its consequences, notwithstanding that society deems the choice inappropriate. We hold that, ordinarily, a competent defendant should be allowed to decide, personally, whether to invoke it. Absent the most unusual circumstances, this decision binds not only counsel but also the trial judge.
>
> * * *
>
> This is not to say that counsel and trial judge have no role to play when questions as to mental fitness arise in a case. The issue of competency to stand trial, for example, is one that should be raised by counsel in proper circumstances. Obviously, a defendant who does not have the mental capacity to decide whether to reject the defense of not criminally responsible cannot be allowed to make that decision. And the question of competence to stand trial is ultimately one for the trial court to make. Moreover, it may well be the proper course for defense counsel, at the early stages of a case, to file a plea of not criminally responsible if the facts appear to warrant it. Of course, counsel should consult with client as to the consequences and impact of interposing that plea, and the reasons, from the viewpoint of trial strategy, why it might be advantageous or disadvantageous to do so. But if the defendant is competent and makes what appears to be a knowing, intelligent choice, counsel must honor that choice.
>
> If there is disagreement between client and counsel on this point, and if counsel has doubts about the client's competence, or doubts about the intelligent and knowing nature of the client's decision, it is counsel's responsibility to bring the problem to the court's attention. The court also may become aware of the problem when . . . the conflict between counsel and client is raised by the client. When such a conflict arises, the trial judge is not entitled to insist that a competent but unwilling defendant plead that defense, however unwise the judge thinks the failure to do so may be. The decision is one for the defendant to make, after proper consultation with counsel, just as a competent defendant must, ultimately, decide the wisdom of self-representation or of a plea of guilty. The judge, however, must be sure that the defendant's decision is intelligent and voluntary.

Treece, 313 Md. at 681-82 (citations omitted).

With respect to a criminal defendant's "intelligent and voluntary" withdrawal of an NCR plea,

> [t]he decision to forego a not criminally responsible plea requires the same ability to choose between various alternatives as does the decision to plead guilty, to elect to proceed without counsel, or to waive a jury trial. The defendant must be made aware of available alternatives and of the advantages and disadvantages of one choice as compared to another. The choice must be the defendant's own uncoerced decision, freely made in light of his or her understanding of those alternatives and their respective consequences. In this context, we note, "intelligent" does not necessarily equate to "wise." It simply means that the defendant must have an understanding of the alternatives and consequences that is not based on ignorance or incomprehension.

Id. at 683 (citations omitted).

Here, counsel for Henriques moved to enter an NCR plea on October 1, 2021, citing Henriques's "behavior" and "statements" on "video of the interrogation by detectives" as "a good faith basis to believe that [he] was not criminally responsible at the time of the offense." Counsel specifically cited Henriques's "statements . . . calling himself the Messiah, that God talks to him, and that God had told him that the victim had conspire[d] with others to kill him."

Henriques, in multiple handwritten letters to the court, noted prior letters expressing dissatisfaction with counsel and stated that he wanted to represent himself because he "did not tell my lawyer to say I was not competent to stay in trial" and "would like to handle this matter immediat[e]ly" via "[a] speedy judge tr[ia]l." The court ordered that those requests be referred to defense counsel to handle.

On December 15, 2022, the scheduled trial date, the court asked whether Henriques was proceeding on his NCR plea. During the ensuing colloquy, defense counsel, the court, and the prosecutor agreed that medical evidence would be required to support Henriques's NCR plea:

THE COURT: My first question, respectfully, [defense counsel] is about the plea. **Do we still have an NCR plea?**

[DEFENSE COUNSEL]: Mr. Henriques, if you can stand.

I think – I still believe so, Your Honor. **I still believe that there is some – certainly some issues with regards to his criminal responsibility and his mental capacity at the time of this particular incident.**

THE COURT: Okay. And as I understand the law, the burden of establishing that lies with the defendant. Is that correct?

[DEFENSE COUNSEL]: Yes, Your Honor. And we have had him seen. And I believe Your Honor probably has a copy of the report.

THE COURT: I do not.

* * *

At the trial, the State would put on its evidence in an attempt to prove that Mr. Henriques committed the crime that he is charged with. The burden of proving the NCR lies with the defendant. So that is why I'm asking is that still an issue in the trial.

[DEFENSE COUNSEL]: I certainly believe it is, Your Honor.

* * *

THE COURT: And **do we have an expert opinion on that issue**? Because I –

[DEFENSE COUNSEL]: **We have the report.**

THE COURT: Okay.

[DEFENSE COUNSEL]: And it goes into a lot of the different things that were going through Mr. Henriques' mind at the time of the incident. But ultimately, I think they determined that he was competent to stand trial.

* * *

They did look at criminal responsibility. They determined that he was criminally responsible. But I'm not sure how.

* * *

THE COURT: **Don't I need an expert opinion on that issue?**

[DEFENSE COUNSEL]: **You do, I believe, Your Honor.**

THE COURT: **Okay.**

[DEFENSE COUNSEL]: **And respectfully, I don't think we – the individual that evaluated him determined that they – they believed he was criminally responsible.**

THE COURT: **Okay.**

[DEFENSE COUNSEL]: **And there hasn't been any other kind of evaluation.**

* * *

[PROSECUTOR]: So Your Honor, just – I apologize. I don't have them printed out. But Riggleman v. State[, 33 Md. App. 344 (1976),] . . . . and Treece[.]

* * *

They both state that medical evidence is required to prove that a defendant, as a result of a mental disorder, lacked the ability to appreciate the criminality of his conduct or to be able to conform his behavior to the law.

So defense does have the burden by a preponderance of the evidence to establish that he is not criminally responsible. And he must do that with medical evidence.

So I would be asking, based on the court['s] medical[] report indicating that their opinion is that he is criminally responsible, that this Court make a preliminary determination as to criminal responsibility if Mr. Henriques is not going to withdraw the NCR plea on his own or defense is not requesting their own expert.

Because without medical evidence, they cannot – they cannot meet their burden.

[DEFENSE COUNSEL]: **I think that might be another reason we need a postponement, Your Honor, in order to – because I know that there has been a significant financial burden on Mr. Henriques' family with regard to this case. And I don't know if they have the financial resources to obtain another report from a different therapist or doctor with regards to Mr. Henriques' culpability or criminal responsibility.**

THE COURT: **Okay. But it is not just any doctor.**

[DEFENSE COUNSEL]: **No, certainly. I would have to find somebody that is an expert in this field.**

THE COURT: **So have efforts been made since February to do that?**

[DEFENSE COUNSEL]: **No, there have not, Your Honor. And that is part of the issues that have been kind of ongoing between me and Mr. Henriques with regards to the criminal responsibility aspect of this.**

I think [an NCR plea] is in his best interest. He, in our discussions, doesn't necessarily want to go that route.

THE COURT: But it is his call, not yours.

[DEFENSE COUNSEL]: I understand, Your Honor.

(Emphasis added.)

Henriques insisted on withdrawing his NCR plea:

THE COURT: And I think the case law is also very clear that a not criminally responsible plea suggests that the defendant acknowledges that they were involved in the act as charged. And that is the defendant's decision to say that they were or were not.

And while it might be a defense strategy, I believe what the case law says is the person who bears the burden of the result of that strategy is the defendant.

* * *

So it is – while I understand it is defense strategy, I think it is very clear that it is the defendant's choice which is why I raised the question about the NCR plea because I saw it in the file.

[DEFENSE COUNSEL]: Yes, Your Honor. If you would – would you like me to ask Mr. Henriques, and we can –

THE COURT: Well, do you need to talk to him about that?

[DEFENSE COUNSEL]: If I could have one moment, Your Honor?

THE COURT: Yes.

(Whereupon, a discussion was held off the record.) (11:25:36).

> [DEFENSE COUNSEL]: **Your Honor, based on my discussion with Mr. Henriques, and I knew his desire previously with regard to this particular aspect of the case. And in discussing with him, he would wish to withdraw the NCR at this time.**

(Emphasis added.)

The trial court then directly questioned Mr. Henriques, under oath, in order to determine whether he was making a voluntary and knowing decision to withdraw his NCR plea. Henriques answered numerous questions eliciting information about his address, birth date, age, education, the charges against him, his arrest and detention, his attorneys, the court evaluator's conclusions regarding his competency and criminal responsibility, and eventually his plea. We pick up the transcript at that point:

> THE COURT: So the decision about what to do with that plea is with you. It is not with [defense counsel]. It is your decision.
>
> You understand that, sir?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay. So what would happen with that plea in the case is, we would have a trial. Because you have asked for a jury trial[.]
>
> * * *
>
> And the State would have the burden of proving beyond a reasonable doubt that on January 23, 2022, that you did, in fact, kill Mr. Drummond.
>
> * * *
>
> If they can't prove it, then the case is over, and we're done.
>
> * * *
>
> But if they do prove . . . that you killed Mr. Drummond, then the jury has to decide were you criminally responsible at the time.
>
> My job during the trial is to determine what evidence the jury can and cannot hear. I don't know if you heard [the prosecutor]. There is a law that I have to follow. And the law is I can only let you argue that you were not criminally responsible if there is a doctor's report to say you weren't

criminally responsible. **There has to be some medical testimony to support it. I can't let you just say, well, I wasn't responsible, and then sit down and be done. Can't do that.**

Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: **Okay. And at least right now, my understanding is we don't have any doctor saying that you were not criminally responsible, at least right now.**

So as the trial went along, right now, if you tried to argue that to the jury, I would not allow you to do that.

THE DEFENDANT: **All right.**

THE COURT: **All right. So the choice is really yours whether you would like to continue to have your not criminally responsible plea in the case and try to find a doctor who might say that. Or if you want to withdraw it and just say no, I'm just going to fight and . . . try to prevent the State from proving that I'm guilty. Try to pull apart the State's case.**

Do you understand what I'm saying, sir?

THE DEFENDANT: Yes.

THE COURT: . . . . The outcome . . . is if the jury says, well, we don't believe he is guilty, then that is the end of it. And the case is over.

But if the jury says, we do believe he was guilty, but we don't have any evidence to say that he was not criminally responsible, then you go to the division of corrections.

If they say, we do believe he is guilty, but we believe he is not criminally responsible, you don't go home. You go to a mental health hospital for treatment. And I have no idea how long that might be. It might be years.

Do you understand that, sir?

THE DEFENDANT: Yes.

> THE COURT: **So the choice is yours whether or not you want to keep your not criminally responsible plea in the case or if you want to take it out. It is up to you.**
>
> **Do you want to talk to your attorney about that?**
>
> THE DEFENDANT: **I said I wanted to take it out.**
>
> THE COURT: **Are you sure?**
>
> THE DEFENDANT: **Yes.**

(Emphasis added.)

The court found "that Mr. Henriques' decision to withdraw the plea of not criminally responsible is knowingly, intelligently, and voluntarily made." After changing his plea, Henriques also waived his prior request for a jury trial, instead electing to be tried by the court.

For two reasons, we conclude that Henriques is not entitled to appellate relief from his decision to withdraw his NCR plea. First, the court did not misdirect Henriques regarding the qualified expert opinion. Henriques cites to *State v. Conn*, 286 Md. 406 (1979), and *State v. Bricker*, 321 Md. 86 (1990), for the principle that a criminal defendant asserting an NCR defense must be permitted to present lay evidence of his mental state. Although he is correct that lay evidence is admissible, these cases do not teach that lay evidence, by itself without accompanying medical evidence, is sufficient to establish the two factual predicates for an NCR defense, *i.e.*, that at the time he committed the charged offense, the defendant either did not understand that his actions were criminal or could not conform his behavior to the law.

To the contrary, both *Conn* and *Bricker* recognize that, even though a lay witness may express personal factual observations about whether the defendant acted "normal[,]" any "opinion of a party's mental state and level of comprehension of the consequences of his actions . . . may be expressed only by a 'medically trained psychiatrist, or, since July 1, 1978, by a certified psychologist.'" *Bricker*, 321 Md. at 97 (cleaned up) (quoting *Conn*, 286 Md. at 414). Whereas "[t]he layperson may describe acts and behavior that he or she observed and categorize the conduct as normal or abnormal on that basis[,]" *id.*, a qualified expert

> would not be testifying as to his observation of such acts, but at a time perhaps long after the relevant event would be interviewing an individual, administering tests to him, and from this examination then positing his view on the ultimate issue of sanity as of the time of the alleged crime.

Conn, 286 Md. at 421. "By differentiating between the type of opinion testimony that is permissibly obtained from a layperson and the opinion on the 'ultimate issue' of criminal responsibility properly offered by a qualified expert[,]" the Supreme Court has "accentuated the importance of an expert designation." *Bricker*, 321 Md. at 97.

This precedent supports the principle that a defendant must satisfy his burden of proving an NCR defense by proffering qualified expert evidence that he was not criminally responsible at the time of the offense. Although lay testimony may add relevant factual information to support or challenge an expert opinion, by itself, such evidence is not a substitute for a qualified expert's opinion regarding the two elements of criminal responsibility.

Our second and alternative reason for rejecting Henriques's challenge to his NCR pleas is that he cannot prevail on direct appeal by taking a legal position contrary to his position at trial. As the extended colloquy among the trial court, counsel, and Henriques shows, Henriques expressly disavowed the argument he advances in this Court, when he and defense counsel accepted the need for evidence from a medical expert qualified to opine on his capacity to understand the criminality of his behavior and to conform that behavior to the requirements of the law. *See* CP § 3-109.

We agree with the State that Henriques may not assert "legal arguments that were disavowed before the lower court." *Cf., e.g.*, *Burch v. State*, 346 Md. 253, 289 (1997) ("Defendants . . . will ordinarily not be permitted to 'sandbag' trial judges by expressly, or even tacitly, agreeing to a proposed procedure and then seeking reversal when the judge employs that procedure; nor will they freely be allowed to assert one position at trial and another, inconsistent position on appeal."). Whether we label this preclusive principle as estoppel, waiver, mootness, or acquiescence, the underlying policy is that a party may not seek appellate relief based on a legal argument that contradicts the legal position he asserted at trial. *See, e.g.*, *Franzen v. Dubinok*, 290 Md. 65, 69 (1981) ("[T]he label applied to the rule is less important than its essence that a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.").

Ultimately, we are satisfied that the trial court's decision to accept Henriques's plea change was made on the basis of a thorough examination that included Henriques's sworn

testimony that he understood and accepted the consequences of withdrawing his NCR plea. Under these circumstances, Henriques is not entitled to appellate relief from that decision.[5]

III. Obligation to Fund Defense Evaluation

In his final assignment of error, Henriques contends that "[t]he trial court erroneously failed to take action where private defense counsel put on the record the unlikelihood that [Henriques's] family could afford to have an expert relating to his plea of NCR." Arguing that "[t]here are times when a trial judge has an obligation to step in *sua sponte* when a trial has gone off the rails and curative action must be taken[,]" Henriques maintains that his references to "himself as the Messiah, with a direct line to God[,]" should have prompted the court to "take[] steps to assure that the defense would have the resources necessary to press an NCR defense." The State responds that "[t]his third claim of error was waived when Henriques withdrew his plea of not criminally responsible" because "[t]he trial court's theoretical authority to appoint an expert for an indigent person . . . was irrelevant[.]"

The record does not support Henriques's *post hoc* complaint that his attorney's preliminary expression of concern about whether the family could afford to pay for an NCR evaluation obligated the court to arrange funding for one. To the contrary, Henriques's plea change mooted the need for an expert to evaluate his criminal responsibility.

[5] We express no view about the availability of post-conviction relief. *See generally Bailey v. State*, 464 Md. 685, 703-04 (2019) (recognizing that Maryland appellate courts will "rarely consider ineffective assistance of counsel claims on direct appeal" because "the trial record rarely reveals why counsel acted or omitted to act").

The trial court asked detailed questions about Henriques's medical and mental health history, permitting the court to review his medications, symptoms, diagnoses, and perceptions of his health. In contrast to cases featuring patently troublesome courtroom behavior by the defendant, Henriques answered accurately and appropriately, and otherwise remained engaged throughout trial, leading the judge to find no grounds to be concerned about his competency. *Cf. Thanos v. State*, 330 Md. 576, 585 (1993) (recognizing that trial court did not have "a *sua sponte* obligation to inquire into that which [defendant's] doctors, his lawyers, and he himself saw no need to explore"). In addition, the court reviewed both the State's expert report finding Henriques competent and criminally responsible and Henriques's recorded statement to Detective Moynihan, concluding that Henriques's efforts to clean up the crime scene and conceal Drummond's body in a manner that prevented its discovery indicate that he knew the killing was wrong and was in control of his behavior.

In these circumstances, the trial court did not abuse its discretion by failing, *sua sponte*, to arrange funding for another expert to evaluate Henriques. Given Henriques's behavior in the recorded interview and in the courtroom, as well as the lack of any information other than the report finding him competent to stand trial and criminally responsible at the time of the offense, the trial judge was not obligated to fund an evaluation that would effectively override Henriques's decision to abandon an NCR defense by

inquiring into matters he "saw no need to explore[.]" *Id*. *See generally Treece*, 313 Md. at 683 (recognizing that decision to assert NCR defense belongs to defendant).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.