Circuit Court for Baltimore County
Case No. C-03-CR-21-001016

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1447

September Term, 2023

TYRONE MOSS

v.

STATE OF MARYLAND

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

JJ.

Opinion by Sharer, J.

Filed: May 21, 2025

A jury in the Circuit Court for Baltimore County convicted Tyrone Moss, appellant, of first- and second-degree assault, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm by a disqualified person.[1] The court sentenced Moss to an aggregate term of forty-five years' incarceration.

On appeal, Moss presents the following two questions for our review:

1. Did the trial court violate Maryland Rule 4-215 by permitting the withdraw[al] of counsel and then failing to give the disclosures required by subsection (a)?

2. Did the trial court err and/or abuse its discretion by admitting into evidence four jail calls that contained . . . hearsay statements and were largely irrelevant and unfairly prejudicial?

For the following reasons, we answer the first question in the negative and decline to address the second, as it is not properly before us. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND[2]

On February 27, 2021, Aliek Robinson attended a joint birthday party for his sisters, Jalaysia and Akaira Robinson.[3] The celebration was held at an Airbnb apartment on Coal

[1] The State also charged Moss with attempted first-degree murder, but later entered a *nolle prosse* to that count.

[2] Our resolution of this appeal does not depend upon the evidence adduced a trial. We will, therefore, provide only a brief recitation of the underlying facts to provide context for our discussion of the issues. *See Kennedy v. State*, 436 Md. 686, 688 (2014); *Payne v. State*, 243 Md. App. 465, 472 (2019); *Teixeira v. State*, 213 Md. App. 664, 666-67 (2013).

[3] Because Aliek, Jalaysia, and Akaira share a surname, we will refer to them by their first names. We do so for the sake of clarity and intend no disrespect by the informality.

Stream Way in Parkville, Baltimore County, and lasted from about 9:30 p.m. until around 4:00 a.m. the next day. During the festivities, Jalaysia exchanged phone calls with Moss, a recent ex-boyfriend who had not been invited to the party. In the midst of "bickering . . . back and forth" with Jalaysia, Moss admitted that he had entered her home and taken catering for the party that had gone missing earlier that day.

By 4:00 a.m., the party had wound down, with only five or six of the original thirty or forty attendees remaining. At around 5:00 a.m., Moss arrived at the Airbnb, called Jalaysia via FaceTime, and said: "I am here." Jalaysia went outside to meet Moss, and an argument ensued in the vestibule of the apartment building. During that altercation, Moss "groped [Jalaysia's] private parts" and told her, *inter alia*, that she was "his girl and [was] always going to be his girl."

One of the remaining attendees evidently overheard the argument between Jalaysia and Moss. After waking Aliek, who had fallen asleep minutes earlier, she told him that Jalaysia "was outside fussing" (i.e., "screaming and yelling") and "[t]hey needed somebody to check on her." As he left the apartment, Aliek encountered a man he did not know, but whom he described at trial as "a dark-skinned dude" "with a gun to my sister." Aliek testified that he told the man to "get out" and pushed him in an effort to "get him away from [Jalaysia]." Aliek further recounted: "Dude put the gun on me. Then somebody pushed me from the back. Then I just felt myself get shot." After being shot in the hip, Aliek "hobbled back into the apartment" before "everything went black."

Although she made no mention of having seen a firearm, Jalaysia's account of the circumstances surrounding the shooting was otherwise largely consistent with that of her brother. Jalaysia testified that, upon exiting the apartment, Aliek confronted Moss "about . . . grabbing on [her.]" After Jalaysia introduced him as her brother, Aliek walked toward Moss, and the men began "arguing face-to-face." As Jalaysia attempted to separate Aliek and Moss, Akaira exited the apartment and "swung on" Moss. Aliek followed suit. A "tussl[e]" ensued between Aliek, Akaira, and Moss. As she attempted to break up the fight, Jalaysia heard a gunshot and "felt the heat" from the bullet move from her left, where Moss stood, to her right, where Aliek was.

When Jalaysia looked down, she saw Aliek on the ground screaming. Jalaysia then observed one of her friends exit the apartment, grab Aliek, and "drag[] him inside[.]" Jalaysia resumed arguing with Moss before he grabbed her by the hair and pulled her to the ground. Moss released Jalaysia and fled the scene after the friend who had helped Aliek inside "ran back to the door" and instructed Jalaysia to "get his license plate."

Baltimore County police officers responded to several 911 calls reporting the shooting.[4] Upon arriving at the scene, one of the officers was directed to an apartment, where he found a man with a gunshot wound to the "lower . . . groin area[.]" The officer applied pressure to the wound until medics arrived.

Through their investigation, the police developed Moss as a suspect. They also located a blue Infiniti sedan in a parking lot on Greenmount Avenue in Baltimore City,

[4] In one such call, Jalaysia identified Moss as her brother's shooter.

which Jalaysia identified as Moss's car. A search of the vehicle revealed, among other things, a letter addressed to Moss, a pair of jeans with a live ammunition round in the pocket, and a tool bag containing a second such round. The police also recovered a tan Glock 19X nine-millimeter handgun from beneath a gray Nissan Rogue SUV parked next to the driver's side of the blue Infiniti. The firearm was loaded with ten rounds in the magazine and one in the chamber. When presented with a photograph of the firearm at trial, Jalaysia testified that she had seen Moss with the weapon approximately two months before the shooting.[5]

We will include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Moss contends that the circuit court committed reversible error "in allowing the discharge of defense counsel without complying with the dictates of Maryland Rule 4-215." He presents three arguments in support of that contention. First, Moss claims that the court neglected to advise him of the allowable penalty for attempted first-degree murder, as required by Rule 4-215(a)(3). Secondly, Moss asserts that the court violated Rule 4-215(a)(1)'s requirement that it "[m]ake certain that [he] ha[d] received a copy of the charging document containing notice as to the right to counsel." Md. Rule 4-215(a)(1).

[5] At trial, the parties stipulated that Moss had been previously convicted of a crime that disqualified him from possessing a regulated firearm.

Finally, Moss maintains that the court "did not explain the importance of counsel's assistance[,]" as mandated by Rule 4-215(a)(2).

The State does not claim that the court complied with the requirements of Maryland Rule 4-215(a)(1)-(3). Rather, it rejoins that "Rule 4-215 does not apply because Moss did not seek to discharge his attorney—his attorney requested to withdraw from the case under Maryland Rule 4-214(d)."

Procedural History

On January 5, 2023, less than two weeks before trial was set to commence, the circuit court held a hearing to address an attorney grievance that Moss had filed against his privately retained defense counsel. At the outset of that hearing, the court explained:

> So, Mr. Moss, Maryland law requires me to give you a hearing any time there's any sort of an expression of dissatisfaction with the representation of an attorney that's advanced by a [d]efendant.
>
> I understand you filed a grievance . . . against [defense counsel]. . . . I interpret that as some suggestion . . . that you are dissatisfied with his services. So[,] I owe you a hearing on that issue.

Addressing defense counsel, the court inquired: "[I]s this a private case?" Defense counsel answered in the affirmative, adding: "I told Your Honor when you first signed on for this that I would stay in the whole case. But I have had it." The court then advised Moss that he was free to discharge his attorney, but cautioned that doing so would leave him unrepresented. During a subsequent exchange, Moss expressly consented to defense counsel's continued representation:

> THE COURT: What are you going to do about getting a lawyer?

> [MOSS]: I mean, *I have a lawyer*, but I wrote a grievance for him to see if he could do some type of discrepancy about how he's been obtaining me.
>
> So[,] I am trying to figure out if I am still going to court on the 18th, *he can continue to be my lawyer*.

(Emphasis added.)

Absent any indication that Moss intended to discharge his attorney, the focus of the hearing shifted to whether defense counsel wished to withdraw from the case.

> THE COURT: I don't think [defense counsel] wants to be your lawyer. Is that right, [defense counsel]?
>
> [DEFENSE COUNSEL]: I was only hired for a bail review. I haven't been paid to represent him for the full case. But, as I indicated to the [c]ourt, I agreed to enter my appearance for the whole case. And it was my mistake.
>
> THE COURT: Okay. So, *at this point in time, it's your request to strike your appearance?*
>
> [DEFENSE COUNSEL]: *Yes.*
>
> THE COURT: Okay. So[,] he wants to strike his appearance.

(Emphasis added). Before ruling on defense counsel's motion to withdraw, the court advised Moss that, if the motion were granted, he would be left without legal representation.

> THE COURT: All right. So, Mr. Moss, this is an unusual situation in that *[defense counsel] is asking to be relieved of service for you*. And, at the same time, you filed a grievance case against him, which would be an expression of dissatisfaction with his services.
>
> So[,] *if I* either *grant his motion to strike his appearance* or if I grant your motion to discharge him under Maryland law or if you just fire him, *you*

> *are going to be standing there without a lawyer and with a trial date in 13 days*.[6]
>
> So[,] do you understand this?
>
> [MOSS]: I understand.

(Emphasis added.) When the court subsequently asked whether he planned to apply for representation by the Office of the Public Defender ("OPD"), Moss initially responded that he would "have no choice" but to do so if his attorney withdrew. After the court made clear that it would not compel counsel to continue representing him, however, Moss agreed to apply to the OPD if his attorney was relieved.

The court determined that relieving defense counsel would require a trial postponement, reasoning that "no lawyer" could prepare for such "a serious case" in only thirteen days. During an ensuing colloquy, Moss bemoaned the prospect of another postponement and expressly declined to discharge his attorney.

> [MOSS]: . . . I have been locked up for two years. I have been -- every time I come to court, I never postpone court myself.
>
> So I'm trying to figure out why every time I come to court, the court gets postponed for this reason, that reason, and not any of my reasons.
>
> So[,] I go to court in two weeks. I am trying to figure out *what would be the problem with him still representing me two weeks from now.*
>
> THE COURT: Because I can't force him to do that if --
>
> [MOSS]: You can't force -- *but I am not firing him neither*.

[6] It does not appear that Moss made any such motion. Even if he had, however, his express and unqualified consent to counsel's continued representation would constitute a withdrawal thereof.

THE COURT: Huh?

[MOSS]: I say, you can't force him, but *I am not firing him*.

THE COURT: He can move to strike his appearance because you haven't paid him.

(Emphasis added.) Turning to defense counsel, the court asked whether he was prepared to proceed to trial. Counsel responded:

> [DEFENSE COUNSEL]: Am I? Not with this grievance pending. Judge, here is what I see happening. If he is convicted and I am his attorney, it's going to be a post[-]conviction because this grievance is pending throughout.
>
> You know, *I have had it with this guy*, with all due respect. And *enough is enough*. *The grievance was the final straw.*

(Emphasis added.) Moss, in turn, explained that he had filed the grievance in an effort to elicit information regarding the case and to obtain a copy of discovery. Moss added that if defense counsel withdrew from the case, he (counsel) would be acting of his own volition.[7]

After hearing from Moss and his attorney, the court granted defense counsel's motion to withdraw, reasoning:

> THE COURT: All right, it is plain as the nose on my face that [defense counsel] continuing to represent Mr. Moss would be a disaster of epic proportions in Anglo-American [jurisprudence].
>
> He doesn't like [defense counsel]. He doesn't think [defense counsel] has done a good job. *[Defense counsel] doesn't want to represent him anymore, won't represent him anymore, I guess, unless I order him to, but I am not going to do that.*

[7] Moss's actual words were: "So if he wants to quit to relieve his self, that's on his own persuasion."

> So[,] *I am going to strike the appearance of [defense counsel]*. The question is: What do we do next? And the answer is I am going to []specially assign this case to myself and make sure that we get this case in as quickly as possible.
>
> And we are going to give you a trial, if that's what you want. But the first thing we are going to do is have you apply for the services of the Office of the Public Defender and the State of Maryland.
>
> * * *
>
> THE COURT: . . . I can't, based on what I have heard, find that there is a meritorious reason for discharge.
>
> But it's an irrelevant finding because Mr. Moss clearly doesn't want [defense counsel] to represent him and [defense counsel] doesn't want to represent Mr. Moss.
>
> So[,] the discharge is the -- for reasons under Rule 4-215 are academic because neither of these people want to have anything to do with one another. So[,] *I am going to strike the appearance of [defense counsel]*.
>
> * * *
>
> All right, so I am going to arraign you since *I have just stricken the appearance of [defense counsel] at his request* and with the assent of the [d]efendant that I can infer from the fact that he filed this grievance case against him.[8]

(Emphasis added.) The court then apprised Moss of the charges against him, as well as the elements and maximum penalties for each offense but one. Although the court informed Moss that he was charged with attempted first-degree murder, a charge that was later *nolle prossed* by the State pretrial, and explained the elements of the crime, it neglected to

[8] We do not conclude that Moss consented to counsel's withdrawal. That said, it does not appear that any such consent was required.

mention the corresponding maximum penalty. Finally, the court advised Moss of his right to counsel:

> Now, Mr. Moss, you have a right to have counsel represent you under the 6th [A]mendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights. You are going to exercise this [right], as I gather, by applying for a public defender, right?
>
> [MOSS]: Right.
>
> * * *
>
> THE COURT: Okay. You don't have to do that. If you can hire and pay a private attorney, you are certainly within your rights to do that. But the right to counsel is waiv[]able. So[,] be careful about making sure that you do everything in your power to get up with an attorney at the earliest possible date.

Promptly after the hearing, a District Court Commissioner determined that Moss was eligible for representation through the OPD. On February 10, 2023, an assistant public defender entered his appearance on Moss's behalf and represented him continuously through sentencing.

Standard of Review

The Maryland Rules are "'precise rubrics established to promote the orderly and efficient administration of justice[.]'" *Pinkney v. State*, 427 Md. 77, 87 (2012) (quoting *Parren v. State*, 309 Md. 260, 280 (1987)). With respect to Rule 4-215, specifically, the Supreme Court of Maryland has consistently cautioned that "the requirements of the Rule are mandatory," and its "mandates require strict compliance[.]" *Williams v. State*, 435 Md. 474, 486 (2013) (cleaned up). Thus, "'a trial court's departure from the requirements of Rule 4-215 constitutes reversible error'" and cannot be deemed harmless. *Id.* (quoting

Pinkney, 427 Md. at 87-88). *See also Lopez v. State*, 420 Md. 18, 31 (2011) ("[Rule 4-215's] provisions . . . are not subject to a harmless error analysis."). Whether a trial court strictly complied with Rule 4-215 is a question of law, which we review *de novo*. *See State v. Weddington*, 457 Md. 589, 598-99 (2018) ("To determine if the trial court properly complied with Rule 4-215[], we review its ruling *de novo*."); *Weathers v. State*, 231 Md. App. 112, 131 (2016) ("'We review *de novo* whether the circuit court complied with Rule 4-215.'" (quoting *Gutloff v. State*, 207 Md. App. 176, 180 (2012))).

Maryland Rule 4-215

The Supreme Court of Maryland promulgated Rule 4-215 "to protect both the right to the assistance of counsel and the right to self-representation." *Pinkney*, 427 Md. at 92. *See also Johnson v. State*, 355 Md. 420, 426 (1999) ("Maryland Rule 4-215 exists as a safeguard to the constitutional right to counsel, providing a precise 'checklist' that a judge must complete before a defendant's waiver can be considered valid[.]"). "The purpose of the Rule is to 'protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration[.]'" *Pinkney*, 427 Md. at 93 (quoting *Parren*, 309 Md. at 280).

"Rule 4-215(e) governs the 'court procedure when a defendant expresses a desire to discharge his or her current counsel." *State v. Graves*, 447 Md. 230, 240-41 (2016) (quoting *State v. Davis*, 415 Md. 22, 30 (2010)). That section states:

> (e) **Discharge of counsel — Waiver. —** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the

> court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. *If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.*

Md. Rule 4-215(e) (emphasis added). Rule 4-215(a)(1)-(4), in turn, provides[9]:

> (a) **First appearance in court without counsel.** — At the defendant's first appearance in court without counsel, . . . the court shall:
>
> (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
>
> (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
>
> (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
>
> (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

By "[r]equiring the court to comply with Rule 4-215(a)(1)-(4)[,]" Rule 4-215(e) thus "ensur[es] that an accused has sufficient information regarding the consequences of discharging counsel as to be able to waive knowingly and intelligently the right to counsel." *Argabright v. State*, 75 Md. App. 442, 455-56 (1988). *See also Fowlkes v. State*, 311 Md. 586, 609 (1988).

[9] Although not at issue in this appeal, the record makes clear that Moss was fully advised as required by Rule 4-215(a).

Analysis

"'When interpreting the Maryland Rules, we look to the ordinary rules of statutory construction.'" *Pinkney v. State*, 200 Md. App. 563, 571 (2011) (quoting *King v. State*, 407 Md. 682, 698 (2009)). Accordingly, we begin by examining the plain meaning of the rule at issue. *See Williams v. State*, 457 Md. 551, 568 (2018) ("It is well established that when we interpret the Maryland Rules, we first examine the plain language."). "Where the language of the rule is clear and unambiguous, our analysis ends." *Burson v. Simard*, 424 Md. 318, 324 (2012) (quotation marks and citation omitted). When the rule is ambiguous, however, "'we may look to other sources in order to determine the [Maryland Supreme Court's] intent.'" *In re Alijah Q.*, 195 Md. App. 491, 514 (2010) (quoting *State v. Wiegmann*, 350 Md. 585, 592 (1998)).

As is evident from the plain language of the above-quoted provisions, Rule 4-215(a)'s procedural requirements are triggered when (1) the court permits a defendant to discharge counsel; or (2) a defendant appears in court without an attorney. Moss does not assert, nor does the record reflect, that he appeared before the court without counsel. The question, therefore, is whether the court "permit[ted] [Moss] to discharge counsel" in granting his attorney's request to withdraw from the case. Md. Rule 4-215(e).

By its terms, Rule 4-215(e) applies when "a defendant requests permission to discharge an attorney whose appearance has been entered[.]" Md. Rule 4-215(e). The Supreme Court of Maryland "has espoused a broad interpretation of what constitutes a request to discharge counsel." *Weddington*, 457 Md. at 601. It has consistently held that,

for purposes of Rule 4-215(e), "[a] request for permission to discharge counsel . . . is 'any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel.'" *Graves*, 447 Md. at 241-42 (cleaned up) (quoting *Gambrill v. State*, 437 Md. 292, 302 (2014)). The request "need not be explicit, nor must a defendant state his position or express his desire to discharge his attorney in a specified manner[.]" *Gambrill*, 437 Md. at 302 (internal quotation marks and citations omitted). *See also State v. Hardy*, 415 Md. 612, 623 (2010) ("A defendant makes such a request even when his or her statement constitutes more a declaration of dissatisfaction with counsel than an explicit request to discharge."); *State v. Campbell*, 385 Md. 616, 632 (2005) ("Campbell's request did not need to be a talismanic phrase or artfully worded to qualify as a request to discharge[.]"). Moreover, the request to discharge need not come directly from a defendant. Rather, defense counsel may make such a request on a defendant's behalf. *See Holt v. State*, 236 Md. App. 604, 616 (2018) ("Rule 4-215(e) is invoked by '[a]ny statement that would reasonably apprise a court of defendant's wish to discharge counsel . . . *regardless of whether it came from the defendant or from defense counsel*.'" (emphasis added) (quoting *Davis*, 415 Md. at 32)).

Not every expression of dissatisfaction with counsel's performance should be construed as indicating a desire to discharge him or her. *Wood v. State*, 209 Md. App. 246 (2012), *aff'd*, 436 Md. 276 (2013), is instructive in this regard. Less than two months before standing trial for first-degree murder, Wood submitted a letter to the trial court expressing concerns with the assistant public defender assigned to his case. The letter stated: "I have

been having problems with my [d]efense [a]ttorney . . . and I believe he has not issued me my copy of the [d]iscovery." *Id.* at 255 (cleaned up). At a subsequent pretrial hearing, Wood advised the court that he had still "'not been issued discovery'" and agreed with the court's assessment that he did not believe counsel was effectively representing him. *Id.* At no point, however, did Wood either explicitly state that he wished to discharge his attorney or express a desire to obtain substitute counsel. Wood's attorney continued to represent him through trial, where Wood was convicted.

On appeal, Wood argued that the circuit court erred by failing to conduct a Rule 4-215(e) inquiry.[10] This Court disagreed, holding that Wood's expressions of dissatisfaction with his attorney were insufficient to trigger Rule 4-215(e) because they did not "constitute[] a request to discharge counsel." *Id.* at 286. Both in his letter to the court and at the pretrial hearing, Wood's "specific complaint concerned a 'lack of discovery' rather than an attempt to discharge counsel." *Id.* While Wood also told the court "that he had been 'having problems' with" his attorney, *id.* at 287-88, and agreed "that he did not feel [counsel] was effectively representing him[,]" we determined that neither statement "'indicated that he had a present intent to seek a different legal advisor.'" *Id.* at 288 (cleaned up) (quoting *Davis*, 415 Md. at 33). We concluded that because Wood's complaints would not, without more, "reasonably apprise the . . . court of his wish to discharge . . . counsel[,]"

[10] Specifically, Wood contended that "the circuit court failed to comply with Maryland Rule 4–215(e) by not: (1) inquiring as to whether he wanted to discharge his counsel; (2) eliciting and considering an explanation for his dissatisfaction with his counsel; and (3) determining whether the reasons were meritorious, and thereby warranting discharge." *Wood*, 209 Md. App. at 278.

id. at 287 (cleaned up), they "did not rise to the level of mandating a Maryland Rule 4-215(e) inquiry[.]" *Id.* at 288.

Here, as in *Wood*, Moss's dissatisfaction with his attorney stemmed from a desire to obtain discovery, as well as other information regarding his case. Moreover, Moss neither explicitly requested to discharge his then defense counsel nor expressed a present intent to seek other counsel. To the contrary, Moss repeatedly declined to "fire" his attorney and affirmatively consented to his continued representation. Accordingly, we conclude that Moss's complaints did not rise to the level of a request to discharge defense counsel, and the requirements of Rule 4-215(e) were therefore never triggered. *See Dykes v. State*, 444 Md. 642, 651 (2015) ("*Rule 4-215(e) governs situations in which a defendant* already is represented and *seeks to discharge counsel*." (emphasis added)). Although Moss did not seek permission to discharge his attorney, defense counsel clearly requested leave to withdraw his own appearance.

As this Court has previously explained, however, "Rule 4-215(e) does not contemplate that circumstance."[11] *McClaine v. State*, No. 1333, Sept. Term, 2022, slip op. at 21 (unreported) (filed Mar. 5, 2024). Instead, such motions to withdraw are governed by Maryland Rule 4-214(d), which provides, in pertinent part: "If leave [to withdraw] is

[11] This is not to say that an attorney's motion to withdraw his or her appearance can never constitute a request for permission to discharge counsel filed by that attorney on a defendant's behalf. *See Holt*, 236 Md. App. at 616 ("Rule 4-215(e) is invoked by any statement that would reasonably apprise a court of defendant's wish to discharge counsel . . . *regardless of whether it came from the defendant or from defense counsel*." (emphasis added; cleaned up)).

granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215." Notably, while Rule 4-215(e) bypasses Rule 4-215(a)'s prerequisite that the defendant "appear[] in court without counsel," Rule 4-214(d) does not. Rather, it serves to ensure that the defendant will appear in court, at which point the presiding judge must comply with the requirements of Rule 4-215(a) if, and only if, the defendant remains unrepresented.[12]

II.

Moss also contends that the circuit court erred in admitting Jalaysia's statements as captured in recordings of four jailhouse calls between them. Specifically, Moss challenges the court's determination that Jalaysia's recorded remarks were admissible for the non-hearsay purpose of showing their effect on him as the listener. He argues that "[t]he State offered [Jalaysia's] statements as substantive evidence that on February 28, 2021, Mr. Moss shot her brother—not as substantive evidence that . . . Mr. Moss [subsequently] denied it."[13]

[12] Moss obtained substitute representation prior to his next in-court appearance and did not appear in court without counsel after his original attorney's withdrawal; thus, the trial judge was under no obligation to comply with Rule 4-215(a)'s procedural mandates.

[13] Alternatively, Moss claims that the court erred in admitting "[e]xtended portions of the jail calls" because they "were irrelevant and any probative value was substantially outweighed by the danger of unfair prejudice." This, however, was not among the specific grounds Moss offered in support of his objection. Accordingly, the issue is not properly before us, and we decline to address it. *See Gutierrez v. State*, 423 Md. 476, 488 (2011) ("[W]hen an objector sets forth the specific grounds for his objection the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds

(continued . . .)

The State responds that Moss failed to preserve his hearsay argument for appellate review. In support of that assertion, the State cites the following remark made by defense counsel during a colloquy on the admissibility of Jalaysia's recorded statements: "[I]f Jalaysia . . . comes into court and testifies, those statements, those calls are going to come in. I won't have any argument about that." The State argues that defense counsel thus conditioned his hearsay objection on Jalaysia's continued absence from the witness stand, such that her subsequent testimony "eliminat[ed] that basis for objection."

Even if Moss's hearsay argument had been properly preserved, the State maintains, Jalaysia's "statements to Moss were not hearsay because they were not offered in evidence . . . to prove the truth of the matter [asserted]." Rather, the State asserts, "they were offered for their effect on Moss, to provide the necessary context for [his] responses[,] which were admissible as statements of a party-opponent." Alternatively, the State argues that "many of Jalaysia Robinson's statements were admissible because they constituted adoptive admissions by Moss."

not specified." (cleaned up)); *State v. Jones*, 138 Md. App. 178, 218 (2001) ("[W]hen particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated." (quotation marks and citation omitted)), *aff'd*, 379 Md. 704 (2004). It is of no moment, moreover, that Moss subsequently presented this argument in support of a motion for a new trial, as doing so "is not a substitute for preservation." *Washington v. State*, 191 Md. App. 48, 121 n.22, *cert. denied*, 415 Md. 43 (2010). *See also Torres v. State*, 95 Md. App. 126, 134 (1993) ("A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for nonpreservation.").

Procedural History

At trial, the State called Detectives Bryan Trussell and Candice Covington of the Baltimore County Police Department, who were among the officers who responded to the February 28, 2021, shooting at Coal Stream Way.[14]

Detective Trussell testified that he reviewed recordings of four jail calls Moss made to Jalaysia on March 2, 2021. The recorded calls totaled nearly two hours in duration.

When the State sought to introduce those recordings, defense counsel objected, arguing that the State had not laid a sufficient foundation for their admission by establishing the identities of the speakers. The court initially overruled that objection. After the State began playing the first recording, however, the court instructed it to "pause that for a minute." During an ensuing bench conference, the court advised the parties: "Before [the jurors] hear any substance of these calls, I need to re-visit [defense counsel's] objection. We need some kind of identification that this call is from [Moss]." Following the bench conference, Detective Trussell confirmed that Jalaysia's phone number had been used in all four of the recorded calls placed by Moss.

As its next witness, the State called Detective Covington, who was Detective Trussell's partner at the time of the shooting and to whom he had relayed the content of the jail calls. Detective Covington testified that she listened to the recordings and was able to identify the voices on the calls, based on having spoken to Moss for "[a] couple minutes"

[14] We find the first names of Detective Trussell and Detective Covington from the State's witness list, but they do not appear in the trial transcripts.

and to Jalaysia "at length." When the State subsequently asked Detective Covington to describe "the specific content[]" of the conversations, defense counsel objected. The court sustained the objection, explaining that the State had not laid a sufficient foundation to show that Moss had made the calls in question. Defense counsel agreed, stating: "[T]hat's why I objected on foundation. There is no foundation tying . . . Moss to those calls." The State responded that the fact that Jalaysia's phone number had been used in the calls, coupled with a voice identification by Detective Covington and the content of the conversations, would establish the necessary foundation.

Following a brief recess, the court asked counsel whether they wished "to be heard any further[.]" Accepting the court's invitation, defense counsel offered the following alternative argument:

> [E]ven if that was authenticated[,] . . . Jalaysia's statements in th[ese] phone call[s] are inadmissible.
>
> She is not testifying. We don't have an opportunity to confront her. It's clear hearsay. . . . Jalaysia Robinson's statements should not come in because she is not here to testify and can't be confronted and that's an absolute right that the [d]efendant has is to confront somebody on statements that they are making in court.

The court responded: "Well, at this juncture, we don't know that she's not available to testify. . . . She is not here today. But that doesn't mean that she won't be here. We don't know about that." Turning to the State, the court asked whether it had any response to the argument that Jalaysia's statements were hearsay. The State replied that Jalaysia's statements were admissible because they were being offered to show their effect on Moss, the listener, rather than for their truth. Defense counsel, in turn, rejoined:

> So[,] if Jalaysia Robinson comes into court and testifies, those statements, those calls are going to come in. I won't have any argument about that. But her statements are hearsay. And we have a right to confront somebody.
>
> [The] Supreme Court is very clear. If that person doesn't testify and we haven't had a prior opportunity to cross examine them, then those statements have to be excluded. So that's what those statements are.

The court ruled that the recordings were admissible, reasoning:

> THE COURT: . . . They are . . . sufficiently authenticated by the voice identifications of the officers who have spoken to [the] parties involved.
>
> It goes to the weight, not the admissibility. And relative to the second party's statements, Jalaysia Robinson's, I do not believe they are being offered for the truth of the matter asserted. They are not true hearsay.
>
> It goes to the total context of the conversation to elicit responses and communications from the admissions of the [d]efendant or the statements of the [d]efendant.

After the court announced its ruling, defense counsel maintained that admitting Jalaysia's recorded statements would violate both the rule against hearsay and Moss's right to confrontation, arguing:

> [I]t's absurd . . . that these aren't offered for the truth of the matter. Of course, that's what [they are] coming in for. That's what [the State] wants to use them for, that her statements are supposed to be for the truth.
>
> And it doesn't even matter. Because it's still a confrontation clause problem, not anything else. . . . [I]f Jalaysia comes in here, then it comes in. I agree.
>
> If she doesn't come in here, you can't put the toothpaste back in the tube . . . . We have no way to confront her with that, to challenge her on anything she says. We don't have a way to do that.

Defense counsel concluded that "[Jalaysia's] stuff needs to stay out." Evidently unpersuaded by counsel's argument, the court admitted the recordings, subject to defense counsel's objection, and permitted the State to play the fourth jail call for the jury. Jalaysia ultimately took the stand and testified on the last day of trial.

Preservation

We agree that the issue of the admissibility of Jalaysia's recorded remarks is not preserved for appellate review, albeit for different reasons than that advanced by the State. We explain.

In challenging their admissibility, Moss does not go so far as to claim that Jalaysia's recorded statements consisted exclusively of inadmissible hearsay. Instead, he cherry-picks five remarks Jalaysia made in two of the four jail calls—none of which he specifically addressed at trial.[15] He then argues that because statements such as those "served to establish the facts underlying . . . the charged offenses[,]" they were not admissible for the non-hearsay purpose of showing their effect on him. As the following cases illustrate, however, when a document or recording contains both admissible and inadmissible evidence, the objecting party generally must pinpoint the objectionable portions and request their redaction in order to preserve the issue for appellate review.

During a police interview, the victim in *Belton v. State*, 152 Md. App. 623, *cert. denied*, 378 Md. 617 (2003), identified Belton as his assailant. At trial, however, the victim

[15] None of the quotations that Moss cites appear to have been from the fourth recording, which the State played for the jury.

recanted his identification. The State responded by offering the victim's recorded police statement into evidence, which the court admitted over Belton's objection, reasoning that it was admissible under the prior inconsistent statement exception to the hearsay rule. The State then played the recording for the jury, which ultimately convicted Belton. On appeal, Belton claimed, *inter alia*, that the court "exceeded its authority by playing 'the entire six minute tape' to the jury," arguing that "only the identification portion of the statement . . . should have been admitted." *Id.* at 633. In affirming the circuit court, we found that Belton failed to preserve this argument, reasoning[16]:

> [A]fter the circuit court overruled appellant's general objection to admission of the tape, *appellant did not request a redaction or limitation of the portion of the tape to be played to the jury*. Appellant contended at oral argument that it was the State's obligation to limit or redact portions of the tape that exceeded [the victim's] identification. This contention is without merit, for *it is the obligation of the party seeking redaction to raise the issue to the judge*.

Id. at 634 (emphasis added). *See also* 5 Lynn S. McLain, *Maryland Evidence: State and Federal* § 103:8, at 59 (3rd ed. 2013) ("McLain, *Maryland Evidence*") ("[I]f one's general objection is overruled, one must request redaction of the objectionable part, in order to complain on appeal of the court's failure to redact."); Joseph F. Murphy, Jr. & Erin C. Murphy, *Maryland Evidence Handbook* § 105[B], at 31 (5th ed. 2020) ("If your objection

[16] Although the *Belton* Court did not expressly state that this issue was unpreserved, the Supreme Court of Maryland has since interpreted it as holding as much. *See State v. Smith*, 487 Md. 635, 675 (2024) ("The Appellate Court held that the appellant had failed to preserve his objection of the admissibility of the hearsay evidence by not requesting a redaction or limitation of the portion of the tape that was played to the jury.").

gets overruled, request that the trial judge exclude specific portions which could easily be redacted.").

Williams v. State, 117 Md. App. 55 (1997), also involved the admission of an out-of-court identification as a prior inconsistent statement after the identifying witness recanted at trial. Although Williams objected to the introduction of the entire police interview, he did not specifically object to the inclusion of consistent portions of the statement. On appeal, Williams argued that the "portions of the statement that were consistent with [the witness's] trial testimony should not have been admitted." *Id.* at 67. In holding that Williams failed to preserve this argument for appellate review, we explained: "[A]ppellant made no objection below to the admission of the statement due to the fact that it included consistent statements. Likewise, *appellant never asked the trial court to redact the portions of the statement appellant believed to be prior consistent statements*. Accordingly, . . . it was not preserved." *Id.* at 68 (emphasis added).

In *Colkley v. State*, 251 Md. App. 243, *cert. denied*, 476 Md. 268 (2021), we applied this preservation principle to statements made during a prior in-court proceeding. During his fifth trial on charges including first-degree murder, Colkley made a general objection to the State playing video footage of testimony from his former trials.[17] Colkley also asked the court to redact the single phrase "'ladies and gentlemen of the jury,'" which was uttered in one of the recordings and suggested that he had been previously tried. *Id.* at 279. The

[17] Colkley's first two trials were reversed on appeal, while the "third and fourth . . . each resulted in a mistrial." *Id.* at 254.

trial court overruled Colkley's objection and denied his redaction request. Colkley challenged these adverse evidentiary rulings on appeal. After reviewing our holding in *Belton*, we observed that "it was [Colkley's] obligation to request redaction of specific portions of the recording[.]" *Id.* at 282. Accordingly, we held that although Colkley had preserved a challenge to the admissibility of the excerpt he specifically requested the court to redact, his general objection was insufficient to preserve a challenge to any other portions.

Against this backdrop, we return to the instant case. Although Moss objected to the introduction of the recordings as a whole, he did so solely on the ground that the State had not laid a proper foundation for their admission into evidence. As noted above, however, Moss has abandoned that claim on appeal. Moss's hearsay argument, by contrast, was directed exclusively at the admissibility of Jalaysia's recorded remarks. Unlike the lack-of-foundation claim, moreover, Moss continues to advance his hearsay argument on appeal.

Moss further argues:

> *Had the court followed defense counsel's recommendation to parse out [Jalaysia's] statements from Mr. Moss's*, the court would have asked the State specifically which statements the State planned to admit into evidence. The State and defense counsel could have made arguments as to why specific statements were hearsay or not . . . . The court could have admitted the few statements that . . . [fell] within an exception to the rule against hearsay. Instead, the court admitted two hours' worth of conversation[s] between the defendant and his ex-girlfriend, a testifying witness.[18]

[18] Notably, Moss does not argue that the trial court was obligated to parse the recordings on its own initiative. It is unclear, moreover, where in the trial transcript Moss believes he "recommended" that the court do so.

(Emphasis added.)

In that argument, Moss appears to suggest, but does not cite, *State v. Smith*, 487 Md. 635 (2024). In *Smith*, the Supreme Court of Maryland recognized a narrow exception to the preservation principle applied in *Belton*, *Williams*, and *Colkley*. The Court held that when a proponent offers "an extensive narrative or interview" into evidence under the statement-against-penal-interest exception to the hearsay rule, an objecting party need not "present the trial court with proposed redactions[.]" *Smith*, 487 Md. at 643, 677. Rather, a trial court has an independent duty to "conduct a 'parsing analysis' in which [it] must break down the narrative and determine the separate admissibility of each single declaration or remark." *Id.* at 643 (emphasis omitted). The Court emphasized, however, that "[t]he trial court's parsing requirement . . . *is unique* to this type of hearsay evidence." *Id.* at 676-77 (emphasis retained). Accordingly, although the Court acknowledged that a redaction request is generally necessary to preserve an evidentiary objection, it concluded that a general objection is sufficient to preserve a claim that the trial court failed to parse a lengthy hearsay statement offered as a declaration against penal interest.

Smith is inapposite to the instant case. In contrast to the general objection at issue in that case, Moss made three specific objections. He first objected to the admission of the recordings based on a lack of foundation. Moss then specifically objected to Jalaysia's recorded statements—but not his own—based on hearsay and confrontation grounds. Because Moss neither made a general objection to the recordings' admission nor objected to the portions containing his own remarks, the State never offered the recordings under

the statement-against-penal-interest exception to the hearsay rule. Instead, it offered Jalaysia's recorded remarks for the non-hearsay purpose of demonstrating their effect on Moss, the listener. Thus, the court's duty to parse the recordings was never triggered. *See id.* at 678 (explaining that the court's parsing obligation arises when the court receives a request for "the admission of presumptively inadmissible hearsay under the declaration against penal interest exception").

When initially raising hearsay as a ground for exclusion, defense counsel asserted simply that Jalaysia's statements were "clear hearsay." Moreover, in responding to the State's subsequent argument that Jalaysia's statements were admissible to show their effect on Moss as the listener, counsel merely reiterated: "[H]er statements are hearsay." The court overruled the defense's hearsay objection, reasoning that Jalaysia's recorded remarks were relevant to provide context for Moss's reactions thereto, thereby putting the parties on notice that the statements were admissible for that limited, non-hearsay purpose. *See Bernadyn v. State*, 390 Md. 1, 15 (2005). In response to that ruling, however, defense counsel did not request a limiting instruction prohibiting the jury from considering those statements for their truth. Nor did he seek redaction of or even identify any objectionable remarks Jalaysia may have made. Accordingly, Moss's objection to the admissibility of Jalaysia's recorded statements is unpreserved. *See also Woodlin v. State*, 484 Md. 253, 293-94 (2023) ("[Petitioner's] objections were to the admissibility of the entirety of the evidence offered by the State, not specific portions. Petitioner's decision not to ask . . . the trial judge to limit the scope of the State's evidence means that this issue was not preserved

for appellate review."); *Foreman v. State*, 125 Md. App. 28, 36 (1999) (holding that appellant failed to preserve his argument that victim's out-of-court identification was inadmissible as a statement for purpose of medical treatment because appellant neither requested a limiting instruction under Rule 5-105 nor moved to strike "only that portion of the statement").

Hearsay

Even if Moss's objection had sufficed to preserve the issue of the admissibility of Jalaysia's recorded remarks *collectively*, we would hold that the court did not commit reversible error by admitting them as non-hearsay. Hearsay is inadmissible unless "otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. *See also Vigna v. State*, 241 Md. App. 704, 729 (2019) ("Hearsay is presumptively inadmissible unless it falls under one of the recognized hearsay exceptions."), *aff'd*, 470 Md. 418 (2020). "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, *offered in evidence to prove the truth of the matter asserted*." Md. Rule 5-801(c) (emphasis added). Conversely, an out-of-court statement is not hearsay if it is "'offered for a purpose other than to prove its truth[.]'" *Esposito v. State*, 264 Md. App. 54, 81 (2024) (quoting *Hardison v. State*, 118 Md. App. 225, 234 (1997)).

An extrajudicial statement is offered for its truth when "it would only have any probative value . . . if the out-of-court declarant was both sincere and factually accurate as to the fact(s) he [or she] was asserting at the time he [or she] made the statement." *Id.*

(quotation marks and citation omitted). When an extrajudicial statement would retain probative value even if the out-of-court declarant was neither sincere nor factually accurate when it was made, the statement is non-hearsay. Such non-hearsay includes out-of-court statements offered to show their effect on the listener by, *inter alia*, "provid[ing] needed context for the responses of the other party to a conversation, who is often a party-opponent of the proponent of the evidence." McLain, *Maryland Evidence* § 801:10, at 245-46. *See also Ezenwa v. State*, 82 Md. App. 489, 514 (1990) (holding that third-party statements made during wiretapped phone conversations with the appellants were "relevant and, therefore, admissible, only insofar as they provide a predicate for assessing the appellants'[] reaction and the meaning of appellants'[] statements").

"[M]any statements can have both hearsay and non-hearsay uses." *State v. Young*, 462 Md. 159, 178 (2018). When an extrajudicial statement is relevant for both hearsay and non-hearsay purposes, and no exception to the rule against hearsay applies, "'the court should either exclude the evidence or make clear that the evidence is admitted for a limited purpose.'" *Id.* at 181 (quoting *Bernadyn*, 390 Md. at 15). "Defense counsel is then on notice that the evidence is admissible, albeit for a limited purpose, and may then request a limiting instruction." *Bernadyn*, 390 Md. at 15. As noted above, however, it is generally incumbent upon the defendant to make such a request. *See* Md. Rule 5-105 ("When evidence is admitted that is admissible . . . for one purpose but not admissible . . . for another purpose, the court, *upon request*, shall restrict the evidence to its proper scope and instruct the jury accordingly." (emphasis added)); *Holmes v. State*, 350 Md. 412, 429 (1998) ("'[T]he trial

judge ordinarily is not required to give a limiting instruction in the absence of a request.'" (quoting *Bruce v. State*, 318 Md. 706, 729 (1990))). *See also Quansah v. State*, 207 Md. App. 636, 664 (2012) ("Although a limiting instruction would have been appropriate to advise the jury not to consider the statement for the truth of the matters asserted therein, defense counsel did not request one and the court did not abuse its discretion in failing to give one, *sua sponte*."), *cert. denied*, 430 Md. 13 (2013); *Vuitch v. State*, 10 Md. App. 389, 405 (1970) ("We think the trial judge should have given the jury an instruction limiting the testimony to its non-hearsay use; we do not, however, think his failure to do so, there being no request therefor, amounts to reversible error."), *cert. denied*, 261 Md. 729 (1971).

In challenging the court's determination that Jalaysia's remarks were admissible non-hearsay, Moss merely asserts: "It cannot be[,] as the State argued at trial[,] that the statements were offered for the effect on the listener because Mr. Moss responded to her factual statements with denials that they were true." Moss too narrowly construes "effect-on-the-listener" non-hearsay. As discussed above, such statements include those that are relevant to "provide needed context for the responses of the other party to a conversation[.]" McLain, *Maryland Evidence* § 801:10, at 245-46. *See also United States v. Rivera*, 780 F.3d 1084, 1092-93 (11th Cir. 2015) (holding that a third party's out-of-court statements during four recorded calls with defendant were admissible as non-hearsay to show their effect on the listener, as they provided necessary context to defendant's otherwise disjointed and incoherent responses); *United States v. Lewisbey*, 843 F.3d 653, 658 (7th Cir. 2016) (holding that text messages "*received* [by defendant] were admitted

not for the truth of the matter asserted but instead to provide context for [his] own messages." (emphasis retained)); *Ezenwa*, 82 Md. App. at 514. Considered collectively, Jalaysia's remarks provided context for the relevant and unchallenged statements Moss made in response and were admissible for that non-hearsay purpose.

Although the statements at issue were relevant for a non-hearsay purpose, it does not necessarily follow that they were irrelevant for the truth of the matters asserted therein. In fact, the State, itself, acknowledged that "[s]ome of [Jalaysia's] statements [we]re hearsay[,]" while maintaining they had "an effect on the he[arer] . . . as well." As discussed above, unless a hearsay exception applies, a trial court should *either* exclude such dual-purpose evidence *or* "'make clear that [it] is admitted for a limited [non-hearsay] purpose.'" *Young*, 462 Md. at 181 (quoting *Bernadyn*, 390 Md. at 15). Here, the circuit court chose the latter option, explaining to counsel that it was admitting Jalaysia's remarks for the purpose of providing conversational context for Moss's own statements, including any admissions he may have made. Although he was on notice that the court was admitting Jalaysia's recorded statements for this limited purpose, defense counsel did not request a limiting instruction to that effect. As a limiting instruction was not requested, the court did not err by failing to give one.

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

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