

Circuit Court for Montgomery County  
Case No. 130198C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2266

September Term, 2016

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NATHANIEL HART

v.

STATE OF MARYLAND

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Leahy,  
Reed,  
Shaw Geter,

JJ.

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Opinion by Leahy, J.

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Filed: August 20, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 28, 2011, Appellant Nathaniel Hart pleaded guilty to first-degree rape in the Circuit Court for Montgomery County and was originally sentenced to life imprisonment with all but ninety years suspended. Hart later moved for post-conviction relief, and the court granted such relief in an order dated May 12, 2016, which vacated Hart's conviction and sentence and ordered a new trial.

Two months later, the court convened for a hearing on Hart's request to discharge appointed counsel. Hart stated the reasons for his request, which the court determined were unmeritorious; however, the court deferred its decision so that Hart could meet with appointed counsel, who was not present. On August 25, 2016, the court granted Hart's request after he informed the court that he still sought to discharge his counsel and would represent himself until he could afford an attorney. Hart proceeded pro se at another motions hearing, where his suppression motion was denied, and subsequently requested a continuance so that his discharged counsel could reenter her appearance. The court denied him a continuance.

Throughout a two-day jury trial, at which Hart proceeded pro se, Hart consistently raised his self-represented status during cross-examinations. During one such instance, Hart affirmed the court's offer to explain why he was unrepresented. Hart was later convicted of two counts of first-degree rape, one count of first-degree sex offense, and one count of false imprisonment. He received life imprisonment plus 120 years: life imprisonment for the first-degree rape, a consecutive 60 years for the second count of first-degree rape, a consecutive 60 years for first-degree sex offense, and a general suspended sentence for false imprisonment.

Hart timely appealed to this Court, presenting three issues:

1. “Did the lower court err by failing to comply with the requirements of Maryland Rule 4-215(e)?”
2. “Did the lower court abuse its discretion by denying Appellant’s request for a postponement for the purpose of allowing his former attorney to re-enter the case?”
3. “Did the trial court commit plain error in instructing the jury about Appellant’s self-representation?”

First, we hold that the court complied with the requirements of Maryland Rule 4-215(e). Hart received the opportunity to note his reasons for seeking to discharge counsel; the court determined those reasons were without merit; and the court subsequently discharged counsel and informed Hart of the consequences. We next hold that there was no abuse of discretion in denying the motion for a continuance because the court adequately weighed the circumstances at bar and made a rational decision. Finally, we conclude that the invited error doctrine applies to the court’s explanation regarding Hart’s pro se status because he consistently—and improperly—raised the issue during cross-examination and agreed to the court providing an explanation.

## **BACKGROUND**

Because the resolution of this appeal turns on procedural issues, we recite an abbreviated account of the facts established at trial.

### **A. The Underlying Crime and Conviction<sup>1</sup>**

On January 26, 2010, at approximately 2:00 p.m., E.N., a student at Montgomery

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<sup>1</sup> The facts recounted here were elicited during Hart’s jury trial, which was held on October 11-12, 2016.

College’s campus in Silver Spring, went to the restroom following the end of her first class. She was alone for roughly ten minutes when an individual, later identified as Hart, laid on his back and slid into her locked bathroom stall. His face was partially obscured with a scarf, but E.N. could see the top of his face and eyes and later recalled that he wore light blue jeans and an off-white button up shirt.

E.N. told Hart that the stall was occupied, and he slid back out of the stall; however, as she tried to leave, Hart slid back beneath the partition, stood up, and began kissing her neck and “all over” her. E.N. repeatedly said that she was menstruating in an effort to prevent an assault, but he replied, “[S]top talking, stop talking, don’t move, I have a gun, stop talking, I’ll hurt you.” Although she did not observe a gun, E.N. “could literally feel the whole shape of the gun[.]” in his jeans pocket. Hart then ripped the clothing from the lower half of her body and raped her vaginally.

After the initial attack, Hart told E.N. to face the wall while he cleaned her blood from the floor and stall before giving her paper towels to clean herself. E.N. testified that as she faced the wall, Hart sat down on the other side of the stall, faced away from her, and talked about “his relationship with God and[.] how he wouldn’t be forgiven[.]” While his back was turned, E.N. began sending text messages to her sister and others that she had been raped and provided her location. E.N. first texted for help at 3:02 p.m., and she continued to text for help until 3:35 p.m.

E.N. was then allowed to leave the stall to wash her face at the sink. When she asked to leave the restroom, Hart told her to return to the stall, where he approached her from behind. After E.N. refused to bend over, Hart ripped her pants down and forced his

penis partially into her anus. The pain caused her to scream at him to stop, at which point Hart raped her vaginally a second time.

Security camera footage revealed that Hart left the building at 3:23 p.m. At 3:38 p.m., 9-1-1 received a call reporting a rape, and officers responded to scene and began searching for the man. Sergeant Larry Haley, who was then a detective with the Montgomery County Police, identified Hart as a suspect after speaking with a security guard at Montgomery College who had photocopied Hart's I.D. a week prior amid a complaint that Hart was sleeping in the women's bathroom. Sgt. Haley was then able to confirm that Hart was on the security footage.

Detective Patrick Skiba, who was searching for the suspect in hotels, garages, and cars near the college, pulled into a nearby Days Inn and noticed that a door to a room on the second floor was slightly ajar. After determining that the room was not rented, Det. Skiba and another officer entered and found Hart asleep on a bed. Police took Hart into custody at approximately 8:45 p.m.; he was wearing jeans and a shirt that appeared to have dried blood on its front.

E.N.'s medical report indicated that she sustained six or seven acute vaginal tears consistent with a penetrating injury. DNA analysis demonstrated that E.N.'s vaginal cervical swab was positive for spermatozoa and her rectal swab was positive for a sperm fraction, and that Hart was the source of that foreign DNA. While in custody, Hart underwent a penile swab, the examination of which revealed the presence of E.N.'s DNA.

#### **B. Dismissal of Counsel**

Hart initially pleaded guilty to first-degree rape and served several years of his

sentence. On May 12, 2016, the Honorable Cheryl A. McCally of the Circuit Court for Montgomery County granted Hart’s motion for post-conviction relief. Judge McCally found merit in Hart’s contention that his plea was involuntarily given, and Hart was “now on track for a new trial[,]” set for October 11, 2016. On July 14, 2016, the parties met before the court for a pre-trial motions hearing. Pertinent to this appeal, Hart had filed a motion to discharge his counsel. As explained in more detail, *infra*, the court asked Hart, who was accompanied by substitute counsel from the Office of the Public Defender (“OPD”), to give his reasons for seeking to discharge his attorney. Hart stated that counsel did not explain satisfactorily his original plea agreement and asserted that counsel failed to be present when a search warrant was executed. The court explained that, although he could have counsel present, he did not have a right to have counsel present at the execution of a warrant. Hart still requested a different public defender. The court responded that if Hart discharged counsel, OPD was unlikely to appoint another so that if Hart could not afford to hire an attorney, he would have to proceed pro se. The court further explained that counsel was “extremely experienced” and “a very good lawyer” and that Hart did not have “a good reason for discharging a lawyer.” Thereafter, the court deferred on the motion so Hart could meet with counsel and discuss his case.

Nearly six weeks later, on August 25, 2016, the trial court revisited Hart’s motion. With his appointed counsel present, Hart insisted that he still preferred representation by a different attorney and that if one was not appointed, he would proceed pro se until he could hire new counsel. The court reminded Hart that another hearing was set for September 9, that trial was scheduled for October 11, and that OPD was unlikely to appoint other

counsel. After Hart reaffirmed that he wanted to discharge counsel, the court granted the motion.

### **C. Subsequent Pre-Trial Hearings and Request for Postponement**

Representing himself, Hart returned to court on September 9, 2016, for a set of hearings. At a morning hearing, the court reiterated that Hart discharged counsel and that he would not receive different counsel from OPD. In the afternoon, the court first denied Hart’s motion to dismiss on Double Jeopardy grounds, determining that the State had simply recharged the same charges that were pending at the time of his plea.<sup>2</sup> The court next turned to his motion to suppress a statement, which Hart’s discharged counsel had filed prior to her dismissal. Hart was unprepared and requested another pre-trial hearing so that he could obtain representation; the court denied his suppression motion and reminded Hart that he had discharged his appointed counsel.

Two weeks later, Hart appeared with his discharged counsel, whom he had contacted requesting that she reenter her representation. Although her supervisor permitted counsel to reenter, for her to do so, she needed a continuance as she could no longer attend trial on the scheduled date and would also be seeking to refile the suppression motion. As a result, Hart requested a continuance so that he could “talk over with [dismissed counsel] about her taking on the case.” The State opposed Hart’s motion as “an attempt to

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<sup>2</sup> As the State explained at the hearing on September 9, 2016 on a motion to consolidate the cases (Nos. 115124C and 130198C), Hart pleaded guilty to one charge in 2011, so the State entered *nolle prosequi* on the remaining charges. After Hart received post-conviction relief, “in an abundance of caution, the State [refiled] the charges so that . . . the original charges [are] in this new indictment. It’s nothing new. They are all the same charges.” The court granted the State’s motion to consolidate.

manipulate his right to counsel as to frustrate the orderly administration of criminal justice.” The State’s attorney argued that Hart discharged counsel despite the court’s repeated attempts to persuade him to retain counsel or obtain new counsel, and further represented that the State had already subpoenaed its witnesses for October 11. The court noted that Hart had been repeatedly advised to not discharge his attorney and noted that Hart’s attorney had been assigned to the case for six years, which was distinguishable from those cases in which a postponement was requested to allow new counsel with no exposure to the case to enter an appearance. Based on the foregoing, the court found that Hart’s stated reasons were not an adequate basis to postpone the trial date and denied his motion.

#### **D. Trial and Sentencing**

Hart represented himself at his trial on October 11-12, 2016. Several times while cross-examining witnesses, he made statements about his pro se status instead of posing questions. During one such instance, described *infra*, Hart affirmatively assented to the court’s proposal that it provide the jury an explanation for why he did not have counsel. The trial court later spoke with Hart outside of the jury’s presence where Hart repeatedly asserted that he should be represented by an attorney; the trial court again informed him that he had chosen to discharge his appointed counsel. At the end of the trial’s second day, the jury found Hart guilty of two counts of first-degree rape, one count of first-degree sexual offense, and one count of false imprisonment. On December 12, 2016, Hart received the following sentences, dated retroactively to January 26, 2010: (1) a life sentence for the first count of first-degree rape; (2) 60 years for the second count of first-degree rape, to be served consecutively; (3) 60 years for the first-degree sex offense, to be

served consecutively; and (4) a suspended sentence for false imprisonment.

On December 22, 2016, Hart timely appealed to this Court. We include additional facts as necessary in our discussion.

## DISCUSSION

### I.

#### Discharge of Counsel

At the outset, we examine the exchange between Hart and the trial court on July 14, 2016 when he first requested to discharge his counsel:

THE COURT: [] Okay, so Mr. Hart you have filed a motion indicating that you want to dismiss or discharge your present attorney, is that right?

[HART]: Yes.

THE COURT: All right, please stand and tell me why?

[HART]: So –

THE COURT: I’m asking that because under the rules you have a right to explain your reasons on the record. And based upon your stated reasons I have to decide whether to discharge the lawyer or not.

[HART]: Yeah, one is because she was, the reason why I’m back here today is because the plea was ineffective and she didn’t explain it thoroughly to me on the record. And that was my attorney back in 2010 when the charges first came to court. And so that was one of the reasons why I’m asking for a different attorney. And plus I –

THE COURT: Okay, can you explain to me what you mean by that?

[HART]: Like you know like when I was here she just didn’t, you know, during the pleading she didn’t explain whatever was happening. Like she didn’t explain the charges to me initially and she didn’t, I guess, the elements of the charge she didn’t explain the whole thing what was happening about the charge itself. And that’s one of the reasons why I had got a new trial or I’m here today.

And also there were some things with the evidence and stuff like that I brought to her attention and she didn't go over that before you know the pleading.

\* \* \*

[HART]: So the thing is that when the warrant was executed there was no lawyer present during that time and on that paper it said that if there was a warrant executed then I should, then I invoked that a lawyer actually be present[] during that time and there was no lawyer present during that time when they took that evidence.

THE COURT: Okay, well just because you asked to have a lawyer present for the execution of a warrant doesn't mean you have a right to have one present. . . . There's no right to have counsel present at the execution of a warrant. . . .

\* \* \*

[HART]: [] So yeah basically because [] she wasn't thorough, I mean from my opinion she wasn't thorough the first time[.] I choose today to have a different lawyer because like I said –

THE COURT: So you want to hire your own lawyer?

[HART]: Well, I'm looking into that right now. But I don't have the money to hire my own lawyer so I was looking for someone different from the Public Defen[der]'s Office until, if not then I'll go with a new Public Defender.

THE COURT: Okay, so I don't have the ability to assign you a different public defender. If you qualify for a lawyer from the Public Defender's Office then they're the ones that assign the lawyer. . . . So your request is to basically discharge the Office of the Public Defender because it's highly likely they are not going to assign somebody new.

[HART]: Okay.

THE COURT: So then the question becomes do you want to represent yourself or do you want to hire a lawyer? If you don't have the money to hire a lawyer then you may be representing yourself, do you understand that?

[HART]: Yeah.

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THE COURT: So [trial is] three months away, so I guess what I would say is you have a right to discharge your lawyer. What you might want to do is spend some time with [counsel] preparing the case for a trial if that's what you want because the meeting that you have with her might be different than when you're preparing for a plea. [Counsel] is an extremely experienced attorney. . . . [S]he's a very good lawyer.

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THE COURT: . . . I would say that right now what you've told me really isn't a good reason for getting rid of your attorney or discharging your attorney. And it sounds to me like you're not really prepared to hire a lawyer and facing a first degree rape charge defending yourself is not really a great option for you. You're not a lawyer, right.

[HART]: No.

THE COURT: You haven't been to law school, you've never tried a case yourself, right?

[HART]: No.

THE COURT: Okay, so one thing that I would be willing to do is to defer on your request to get a new lawyer and maybe have you come back in a month or some once you've had a chance to meet with her and go over the case and see what you think about her as a trial attorney since if you're going to try the case or enter into some new plea agreement[ ] it might be a good thing to meet with her again and express to her the concerns you expressed to me. I mean if she's going to be your lawyer she should know how you feel and see how it goes. And if you want to come back at another time in a month or so and say you want to discharge her well then fine. It seems to me like it's been some time, I mean it was back in 2011 [ ] that you did the plea, right?

[HART]: Yes.

THE COURT: Yes, so it's been four or five years since that happened and you might want to meet with her again with the idea of preparing the case and see what you think. You might change your mind, I don't know.

[HART]: Okay, that's fine.

THE COURT: I just think it might be in your – well it definitely would be in your best interest to have an attorney, some attorney. Whether you hire one or whether it's a public defender that's way better than you doing this yourself. So that would be my suggestion. You don't have to do it but that would be my suggestion to you is meet with her again, see what you think, see how it's going to go. And if you want to discharge her I'll let you come back to court, put your reasons on the record and go. I will say at this point what you've told me is not a really good reason for discharging a lawyer.

[HART]: Okay.

The trial court stated that after Hart met with his appointed counsel, counsel would contact the State if Hart still wished to discharge her to set a date for a hearing. That hearing occurred on August 25, 2016, where the following exchange between Hart, accompanied by appointed counsel, and the trial court occurred:

THE COURT: All right. So, we were in court a few weeks ago and the, as I recall, the issue that came up was that you had made a request to discharge your attorney?

[HART]: Yes, Your Honor.

THE COURT: So, we had some conversation about that and at that point, I think the decision was made that, to give you time to think about it and maybe meet with [defense counsel] and decide what you wanted to do. So, that's why I decided to bring you back today after you've had some time to think about it and to discuss it with whomever you'd like and then come to Court and tell me today what it is that you want to do.

[HART]: Fine.

THE COURT: Go ahead.

[HART]: So, yes, I prefer to get a different attorney. If not, then I'll represent myself until I can find the money to pay for an attorney on my own, but until then, I'll represent myself.

THE COURT: Okay. So, today is August 25th and we have a [motions]

hearing that is scheduled for September [] 9th. So, that’s about two weeks from now, and then we visit, the trial date is scheduled for October 11th.

[HART]: Okay.

THE COURT: Do you understand that?

[HART]: Yes.

THE COURT: Okay. So, if I, I just want to make sure you understand the consequences of what you’re doing today—

[HART]: Yes.

THE COURT: —and that’s fine, you can do what you want, but if you discharge [defense counsel] today, I don’t believe that the public defender will appoint another lawyer to represent you. So, that means you’ll either be hiring a lawyer or you will be representing yourself. Do you understand that?

[HART]: Yes.

THE COURT: So, you’re not doing this with the anticipation that another public defender will be appointed, is that right?

[HART]: The thing is that, yes, I don’t know if I’m going to be able to come up with the money on my own, but I mean, in the event that I’m not, then I would prefer to have like you know some at least a stand-by representation to like and you know because I’m not fully trained on law. However –

THE COURT: Okay. Well, if you look to your right –

[HART]: Yes.

THE COURT: – that’s the lawyer that’s going to be representing you –

[HART]: Okay.

\* \* \*

THE COURT: Do you understand that?

[HART]: Yes.

THE COURT: So, what I want to make sure it's crystal clear that if I discharge her, no one else from the public defender's office is going to be assigned to your case. No one else from those offices is going to be sitting [in] the chair next to you. No one else from their office is going to be giv[ing] you assistance or guidance in any way.

[HART]: Okay.

THE COURT: So, it will be up to you to either hire someone or to represent yourself. Do you understand that?

[HART]: I –

THE COURT: Any questions about that?

[HART]: No.

THE COURT: Okay. In light of that, do you still want me to discharge her as your lawyer?

[HART]: Yes.

THE COURT: Okay, So, at this point, then, I'll grant your petition to discharge [defense counsel]. Now, in terms of the upcoming dates, you understand that you have a right to have a lawyer and that a lawyer can assist you in the preparation and then representing you during the trial as well as the preparation and representing you at a sentencing in the event that you're convicted of any charge. Do you understand that?

[HART]: Yes.

Hart contends that the trial court failed to comply with Maryland Rule 4-215(e). He notes that at the July 14 hearing, the trial court afforded him the opportunity to discuss his reasons for requesting discharge of counsel. The court found his reasons without merit, deferring its decision to the August 25 hearing—at which the court granted Hart's request after affirming that he still sought to discharge counsel. Despite this, however, Hart asserts that the trial court committed reversible error because the judge did not, at the August 25

hearing, “inquire as to what had happened between July and August or as to the state of the attorney-client relationship[.]” Therefore, the court failed to consider whether Hart’s reasons for discharging counsel had merit.

The State responds that on July 24, the court heard Hart’s reasons and believed them to be without merit but did not decide the issue, instead affording him a month to confer with counsel and reconsider. The State contends that the subsequent hearing was “an express continuation” and not an independent request to discharge counsel. Therefore, the State maintains that it would be illogical that the trial court could have complied with Rule 4-215(e) if it had discharged counsel at the July hearing but committed reversible error by permitting Hart to reconsider his request before doing so. Even still, according to the State, the trial court ensured at the August hearing that Hart understood the ramifications of his decision.

When considering whether a trial court complied with Maryland Rule 4-215(e)’s requirements, this Court employs a *de novo* standard of review. *State v. Graves*, 447 Md. 230, 240 (2016) (citation omitted). This is “[b]ecause our interpretation of the Maryland Declaration of Rights and Constitution, provisions of the Maryland Code, and the Maryland Rules are appropriately classified as questions of law[.]” *Davis v. Slater*, 383 Md. 599, 604 (2004). As a result, a trial court’s failure to follow Rule 4-215(e)’s mandatory provisions will constitute reversible error. *State v. Hardy*, 415 Md. 612, 621 (2010).

The Sixth Amendment to the United States Constitution, applicable to the States via the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights “guarantee a right to counsel, including appointed counsel for an indigent, in a criminal

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case involving incarceration.” *Broadwater v. State*, 401 Md. 175, 179 (2007) (internal quotation marks and citations omitted). To protect this right, Maryland Rule 4-215 “provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of the Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation.” *Id.* at 180-81 (internal quotation marks and citations omitted).

Accordingly, a decision to waive counsel and proceed self-represented requires that the court conduct an inquiry to guarantee that the defendant’s waiver is knowing and intelligent. *State v. Brown*, 342 Md. 404, 414 (1996). To that end, Rule 4-215(e) governs requests to discharge counsel:

(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 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).

Because of the importance of the rights implicated, Rule 4-215(e) requires strict compliance. *Hardy*, 415 Md. at 621. As a result, the Court of Appeals has delineated a tripartite analysis for considering a request to discharge counsel:

(1) *The defendant explains the reason(s) for discharging counsel*

While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to

their perceptions of the reasons and need for discharge of current defense counsel.

(2) *The court determines whether the reason(s) are meritorious*

The rule does not define meritorious. This Court has equated the term with good cause. This determination—whether there is good cause for discharge of counsel—is an indispensable part of subsection (e) and controls what happens in the third step.

(3) *The court advises the defendant and takes other action*

The court may then take certain actions, accompanied by appropriate advice to the defendant, depending on whether it found good cause for discharge of counsel—*i.e.*, a meritorious reason.

*Dykes v. State*, 444 Md. 642, 652 (2015) (internal citations and quotation marks omitted).

“Once Md. Rule 4-215(e) is implicated, the rule begins with a trial judge inquiring about the reasons underlying a defendant’s request to discharge the services of his trial counsel and providing the defendant an opportunity to explain those reasons.” *Graves*, 447 Md. at 242 (quotation marks omitted). This mandates that a trial court “provide a ‘forum’ in which the defendant can ‘explain the reasons for his or her request.’” *Id.* (quoting *State v. Taylor*, 431 Md. 615, 631 (2013) (additional citation omitted)). A trial court simply must listen, exercise discretion to determine if the expressed reasons have merit and make a rational conclusion. *Taylor*, 431 Md. at 642 (citations omitted).

Here, the court provided Hart ample opportunities to express why he sought to discharge counsel. At the July 14 hearing, the court made repeated inquiries into why Hart wanted to discharge his counsel. Hart explained his reasons, including that counsel had not been thorough nor had been present for a search warrant’s execution. The court informed Hart that counsel was “extremely experienced” and “a very good lawyer”. The

court explained why Hart’s reasons to discharge counsel were not meritorious the court afforded him a month to speak with counsel:

“Okay, so one thing that I would be willing to do is to defer on your request to get a new lawyer and maybe have you come back in a month or some once you’ve had a chance to meet with her and go over the case and see what you think about her as a trial attorney since if you’re going to try the case or enter into some new plea agreement[ ] it might be a good thing to meet with her again and express to her the concerns you expressed to me.”

After having the opportunity to meet with counsel and change his mind, Hart returned a month later with counsel. The court restated the posture and purpose of the hearing:

THE COURT: So, we had some conversation about that and at that point, I think the decision was made that, to give you time to think about it and maybe meet with [defense counsel] and decide what you wanted to do. So, that’s why I decided to bring you back today after you’ve had some time to think about it and to discuss it with whomever you’d like and then come to Court and tell me today what it is that you want to do.

Hart’s decision was unequivocal: “So, yes, I prefer to get a different attorney. If not, then I’ll represent myself until I can find the money to pay for an attorney on my own, but until then, I’ll represent myself.” The court then advised Hart that a motions hearing was scheduled for September 9, 2016, and that the trial date was scheduled for October 11, 2016, and advised Hart that “you can do what you want, but if you discharge [defense counsel] today, I don’t believe that the public defender will appoint another lawyer to represent you. So, that means you’ll either be hiring a lawyer or you will be representing yourself. Do you understand that?” Hart stated plainly that he wished to discharge his public defender and the trial court granted his request.

Although a court must strictly comply with the requirements of Rule 4-215(e), such compliance does not require a court to affirmatively rehabilitate a defendant’s expression

of why he or she desires to discharge counsel. *See Taylor*, 431 Md. at 642. This is especially true when the court has already provided a defendant with sufficient opportunity to contemplate and articulate his decision—and in this case, an additional opportunity to do so. Hart was afforded every opportunity to express his reasons for discharging counsel, and now seeks to “gild[] the lily” of Rule 4-215(e)’s requirements. *See id.*

On this record, we are satisfied that the court complied with the substantive and procedural requirements of Rule 4-215(e), and conclude the court afforded Hart the opportunity to explain why he wanted to discharge his attorney.

## II.

### **Denial of Request for Postponement**

Hart next avers that the court abused its discretion because it denied his request on September 23 to postpone trial scheduled for October 11. His discharged counsel had agreed to reenter her appearance but could not be present for trial on the scheduled day. He asserts that his request for a postponement was “utterly reasonable[]” because he “realized he was in over his head[]” after litigating a suppression hearing on September 9. Hart further maintains that counsel was familiar with the case and that his request occurred several weeks before trial.

The State contends that the court acted within its discretion when it denied Hart’s request for a continuance; it notes that Hart’s counsel would not only require the postponement of trial but would further request a rehearing on the motion to suppress. Additionally, the State advances several reasons why Hart’s request was not reasonable, including that (1) the court had tried to dissuade him from discharging counsel; (2) Hart

knew of the trial date and was reminded prior to discharging counsel; (3) Hart understood that he would have to find new counsel or proceed pro se; and (4) the State had already subpoenaed its witnesses, including one from out-of-state. Even if the request had been reasonable, the State continues, the court’s denial of that request does not automatically equate to an abuse of discretion.

We review a trial court’s decision on a motion to postpone for an abuse of discretion. *Howard v. State*, 440 Md. 427, 444 (2014). As a result, such a decision “will not be reversed simply because the appellate court would not have made the same ruling.” *North v. North*, 102 Md. App. 1, 14 (1994). Instead, an abuse of discretion occurs when a decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.*

Although a defendant’s right to assistance of counsel is of the utmost importance, “[it] does not give an accused the unfettered right to discharge current counsel and demand different counsel shortly before or at trial. . . . A defendant may not manipulate this right so as to frustrate the orderly administration of criminal justice.” *Taylor*, 431 Md. at 645 (quoting *Fowlkes v. State*, 311 Md. 586, 605 (1988)); see also *Moore v. State*, 390 Md. 343, 405 (2005). Thus, although “a presumption in favor of a defendant’s counsel of choice” exists, it may be overcome when balanced with “the demands of the court’s calendar[.]” *Id.* (quoting *State v. Goldsberry*, 419 Md. 100, 118 (2013)).

We discern no abuse of discretion here. The trial court had several grounds upon which to deny Hart’s motion for a continuance. The court observed that counsel had been involved with Hart’s case for several years and remarked that it had warned Hart on

multiple occasions that having counsel would be in his best interest. Hart requested the continuance on September 23, 2016, just over two weeks before trial, but the court had repeatedly reminded Hart throughout the pre-trial process that trial would proceed, as scheduled, on October 11, 2016. Hart sought only to reengage counsel after unsuccessfully litigating several motions, and when his discharged public defender attempted to reenter the case, she stated that she would require a continuance and would also seek to relitigate the suppression motion. We conclude that the trial court, weighing these considerations, did not abuse its discretion when it denied Hart’s motion.

### III.

#### **Court Instruction to the Jury**

We begin with the pertinent exchange from trial, which began during Hart’s cross-examination of Sgt. Haley:

[HART]: So, I just want to know, do you know anything about Federal and State Constitution? Just a little bit.

[SGT. HALEY]: Could you –

[HART]: Well, the thing is, the thing is just I want to ask is that, I understand the Federal and State Constitution give you the Constitutional right to have you be represented by a counsel.

[STATE]: Objection at this time, Your Honor.

THE COURT: Sustained.

[HART]: And I asked this Court to give me a lawyer—

[STATE]: Objection.

[HART]: — more than one time.

THE COURT: Sustained. Sir, you have a right –

[HART]: And I haven't gotten a lawyer –

THE COURT: You have an opportunity –

[HART]: — and I'm representing myself and I'm forced to go to trial by myself.

THE COURT: Do you want me to tell the jury what happened in your past? What you want me to do is explain why you don't have a lawyer?

[HART]: Yes, please.

THE COURT: Okay. So, what happened in this case is that the defendant had a lawyer that was representing him and he terminated that lawyer's representation. We had multiple hearings in Court on that point. I advised him strenuously not to get rid of his lawyer, I told him it was a bad idea. I gave him several weeks if not months to think about that. He came back to Court and he decided he did not want the lawyer and he then terminated that lawyer and so, that's why he doesn't have a lawyer. He was told numerous times that he had a right to have one, he could hire one, a Public Defender would be appointed for one. A Public Defender would be appointed for one. Public Defender was appointed for him and he decided he didn't like that lawyer. So, he terminated that lawyer.

That's why he doesn't have a lawyer and he tries to raise that continuously during these hearings to make it sound as if he's been denied the right to have a lawyer. That is not the case under any circumstance. We've been going through this for months and that's where he finds himself right now.

So, do you have any questions of this witness?

\* \* \*

[HART]: No, I just want to let the Court know again –

THE COURT: Okay, so you can –

[HART]: — that I asked for an attorney –

THE COURT: You can be excused.

[HART]: — to represent me —

\* \* \*

[HART]: — over and over again.

As his final claim, Hart asserts that the court committed plain error when explaining why he was unrepresented at trial—even though he affirmatively assented to such an explanation. He avers that the court “ventured into the terrain of prejudicial negative editorializing.” Although Hart did not object to the court’s instruction, he asserts that the court committed plain error because its statements were likely to unduly influence the jury and prejudice its members against him.

The State contends that Hart did not preserve the issue and that the invited error doctrine bars our review since Hart agreed to the court’s instruction. Alternatively, the State avers that there is no plain error because Hart’s “disruptive conduct and misleading statements [] over repeated sustained objections” required a corrective clarification. It also maintains that the court’s remarks were appropriate and that the court’s expression of its impatience does not warrant reversal. Finally, even if the court plainly erred, the State continues that Hart has not demonstrated that such error was material to the trial’s outcome.

Regarding preservation, the Court of Appeals stated, “The rules for preservation of issues have a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court[.] The few cases where we have exercised our discretion to review unpreserved issues are cases where prejudicial error was found and the failure to preserve the issue was not a matter of trial tactics.” *Conyers v. State*, 354 Md. 132, 150 (1999). Preservation therefore ensures that an unsuccessful part “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[.]” *Burch v. State*, 346 Md. 253, 289 (1997).

“‘Invited error’ is the shorthand term for the concept that a defendant who himself invites or creates error cannot obtain a benefit—mistrial or reversal—from that error.” *Allen v. State*, 89 Md. App. 25, 43 (1991) (citations omitted). This doctrine has been applied “to a number of situations in which a defendant disputes decisions initially prompted or condoned by his or her actions[.]” *Id.*; *see also State v. Rich*, 415 Md. 567, 575 (2010) (“‘The doctrine stems from the common sense view that where a party invites the trial court to commit error, he cannot later cry foul on appeal.’”) (quoting *United States v. Brannan*, 562 F.3d 1300, 1306 (11th Cir. 2009)). The application of the invited error doctrine “makes sense where an *affirmative* act of the appellant produced the error he raises on appeal.” *Smith v. State*, 218 Md. App. 689, 701 (2014) (emphasis in original). Maryland courts have applied this doctrine in several circumstances, including “where the alleged error arose from . . . testimony the appellant had elicited on cross-examination.” *Id.* (citations omitted). Thus, “[i]f the defendant has both invited the error, and relinquished a known right, then the error is waived and therefore unreviewable.” *Rich*, 415 Md. at 580. We are also unaware of any Maryland case that has opted to affirmatively except a pro se defendant from the invited error doctrine.<sup>3</sup>

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<sup>3</sup> Several courts of other jurisdictions have affirmatively held that the invited error doctrine is applicable to represented and pro se defendants alike. *See Moody v. State*, 888 So.2d 532, 577 (Ala. Crim. App. 2003) (pro se defendant that repeatedly made statements to potential jurors during the voir dire process that he was being forced to proceed without

We hold that the invited error doctrine applies here. During several cross-examinations throughout trial, Hart consistently and improperly posed questions to witnesses regarding his self-represented status—or simply went on tangents about the topic. The trial court, heeding that Hart continued to raise the topic, asked if Hart would like the court to explain why he was unrepresented. Hart answered in the affirmative, the court extrapolated as to that history, and Hart did not object. Hart’s questions or editorializing about his pro se status during cross-examination “prompted” the court’s discussion and his affirmative acceptance “condoned” its explanation. *See Allen*, 89 Md. App. at 43. Therefore, because Hart continually raised the issue of his self-represented status, affirmatively agreed to the court’s instruction, and did not object after the instruction was given, he cannot now pursue this issue on appeal.

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

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a lawyer and then challenged statements of judge instructing jurors why defendant was not represented by counsel was estopped from raising the issue on appeal under invited error doctrine). *See also State v. Winfield*, 128 P.3d 1171, 1177 (Utah 2006) (pro se status of defendant did not preclude application of the invited error doctrine); *Lincoln v. Commonwealth*, 228 S.E.2d 688, 690-91 (Va. 1976) (citations omitted) (invited error doctrine in context of closing arguments applies both to represented and unrepresented defendants).