

Circuit Court for Prince George's County
Case No.: CT210903X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2520

September Term, 2023

DENNIS ANTHONY GOSS

v.

STATE OF MARYLAND

Reed,
Kehoe, S.,
Harrell, Jr., Glenn T.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: May 7, 2026

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

Appellant, Dennis Anthony Goss (“Mr. Goss”), was charged and convicted in the Circuit Court of Prince George’s County of first-degree assault, second-degree assault, reckless endangerment and carrying a concealed weapon. The court sentenced him to 25 years without parole for first-degree assault, merged the second-degree assault conviction with the first-degree assault conviction, five years, all suspended, consecutive to the conviction for first-degree assault for reckless endangerment, and five years, all suspended, consecutive to all other sentences for carrying a concealed weapon.

Mr. Goss raises the following issues on appeal:

1. Did the circuit court err in imposing separate sentences for assault in the first degree and reckless endangerment where the offenses were predicated upon a single criminal act in the course of a single criminal episode?
2. Is the evidence insufficient to sustain the conviction for carrying a concealed dangerous weapon, and did trial counsel render ineffective assistance of counsel by failing to preserve the sufficiency issue for appellate review?
3. Did the circuit court abuse its discretion by not sufficiently inquiring into whether Appellant wished to discharge counsel when Appellant expressed dissatisfaction with counsel during the trial?
4. Must the commitment record be corrected because it incorrectly states the sentence imposed by the circuit court?

The State concedes error on the first question. Since we answer the second question in the affirmative, we need not reach the fourth question. We affirm on the third question.

I. Factual Background

At 6:30 p.m. on May 5, 2021, Steve Francis (“Mr. Francis”) got up from a nap, and walked outside to meditate, pray and write in his affirmation book in order to free his mind.

At the time, he was gearing himself to retake the MCAT.¹ Mr. Francis made his way to a courtyard, where he sat on some steps and began to read from his affirmation book, pray and meditate. After a few minutes, he noticed a security patrol car but thought to himself that he was minding his own business. He also noticed a group of people. As the group dispersed, one of the male members of the group walked towards Mr. Francis, who was wearing a green “PHLY” shirt, and asked him if he was from Philadelphia or if he was an Eagles fan. Mr. Francis told him that he was not from Philadelphia and was not an Eagles fan. Mr. Francis explained that the shirt was his father’s and that he is from California. His conversation with this gentleman ended when a woman from the group sat right next to Mr. Francis. The woman asked Mr. Francis if he had an Instagram account and suggested that he follow her. He told her that he did not have an Instagram account and went back to reading his affirmations. The woman then said, “I don’t know why the fuck like he keep touching me like that, I don’t like that shit. Like he thinks I like that shit, I don’t.” Mr. Francis believed that she was talking about another one of the members of her group. One of the male members of the group looked at her and told her to chill. He then could hear that someone was cussing at the security guard. Mr. Goss then approached and grabbed the woman, who told him to stop. This confrontation between Mr. Goss and the woman was right next to Mr. Francis, and the woman began to nudge Mr. Francis. Mr. Goss began to direct his energy towards Mr. Francis. A third man came up to Mr. Francis and asked Mr. Francis what he was doing. Mr. Francis stated that they all came over to him and that he

¹ Medical College Admission Test.

was trying to enjoy his peace. Mr. Goss then said, “you a bitch, shut up.” Mr. Goss tapped Mr. Francis on the nose then got on the step next to Mr. Francis. Mr. Francis stood up. The woman next to Mr. Francis told him to “chill, chill, chill.” Mr. Goss then told Mr. Francis, “I kill people. I’m going to kill you when I see you. I kill people.” At that point, Mr. Francis sat back down and opened his book. Mr. Goss tapped Mr. Francis again, and Mr. Francis stood up. Mr. Francis noticed that Mr. Goss was holding something in his pocket. Mr. Francis said that “[i]t looked like something metal, shiny, black.” Another person tried to intervene and said that Mr. Goss had a knife. Mr. Francis began to back off, when Mr. Goss pulled his hand out of his pocket and pushed it into his face. At that point, Mr. Francis could detect that Mr. Goss had a knife. Mr. Francis described the knife as black with a blade and a handle. Mr. Francis stated, “I only really saw the handle for real.” Mr. Francis stated that, as he was backing up, Mr. Goss stabbed him in the face about a centimeter from his left eye and fractured his nose. He stated that Mr. Goss cut from top to bottom of the bridge of his nose.

Mr. Goss elected to testify. He stated that he got off work and went to an area where he grew up to look up some friends (Phil, Ace and Swag), who were hanging out there. Phil wanted to use Mr. Goss’s Cash App. Mr. Goss told him that his Cash App was not working and called Brittany to see if her Cash App could be used. Brittany’s Cash App seemed to be loading slowly which caused Mr. Goss to get into an argument with her. Mr. Goss grabbed her arm. When Mr. Goss touched Brittany’s arm, Mr. Francis told him not to touch her. Mr. Goss told Mr. Francis that he did not know him and to mind his own business. Mr. Francis got up and got into a loud verbal confrontation with Mr. Goss. Mr.

Goss had his hand in Mr. Francis's face and called him "a bitch." Mr. Francis rushed Mr. Goss. Mr. Goss testified that Ace punched Mr. Francis in the face and knocked him to the ground. After Mr. Francis had been knocked to the ground, Mr. Goss took off running because he noticed that the security guard was coming over. Mr. Goss and the security guard had a history, and the security guard did not like him. Mr. Goss denied having a knife on him or cutting Mr. Francis. He did not learn that Mr. Francis had been cut until he was served with a warrant.

On June 1, 2021, Mr. Francis met with the Hyattsville Police Department. At that meeting he was shown a photo-array and identified Mr. Goss as the man who had stabbed him. At trial, PFC Joseph Valko ("PFC Valko") testified about the process used during photo arrays. After PFC Valko's testimony, the trial judge admonished Mr. Goss, "[i]f you're going to have a lively discussion with your attorney, that's fine, you may do so, but don't do it in front of the jury." Mr. Goss's counsel advised the court that Mr. Goss wanted to address the court. Mr. Goss said that he was unhappy with his attorney's cross-examination regarding the photo array. He wanted his attorney to ask a number of questions that his attorney did not ask. He questioned whether his attorney had his best interest.

The trial judge explained that defense counsel was an experienced attorney and may have had very good reasons to curtail his cross-examinations. At the end of an extensive colloquy, the following exchange took place:

THE COURT:[A]nd that's why he's saying I'm a lawyer, this is what I do because he is trying to not give the witness an opportunity to give more than what the State has already asked, you see? Okay.

THE DEFENDANT: Yeah. I'm good.

THE COURT: You feel okay now?

THE DEFENDANT: Yeah, I'm good.

THE COURT: Okay. All right.

THE DEFENDANT: Thank you. I appreciate it, Your Honor.

THE COURT: You're welcome.

At the close of the State's case, Mr. Goss's counsel made the following motion for judgment of acquittal:

Your Honor, I make a motion for judgment of acquittal based on the evidence presented so far. I believe that the identification of my client as being involved in this incident is unreliable and otherwise I submit on the evidence presented. I understand that at this stage of the proceedings, the Court looks at the evidence in the light most favorable to the State. So I understand that and submit. Thank you.

The trial court denied the motion for judgment of acquittal.

Additional facts will be provided as necessary in the discussion of the issues.

II. Merger of Counts

The failure to merge sentences by imposing separate sentences is an inherently illegal sentence as a matter of law. *Latray v. State*, 221 Md. App. 544, 555 (2015) (citing *Britton v. State*, 201 Md. 589, 598–99 (2011)). The court may correct an illegal sentence at any time. Maryland Rule 4-345(a).

Mr. Goss argues that the conviction for reckless endangerment should have merged into the conviction for first-degree assault for the purpose of sentencing. Mr. Goss advances two grounds. First, under the required evidence test, the acts that formed the basis of the reckless endangerment conviction were included in the acts that formed the basis of the

first-degree assault conviction. The second is the rule of lenity.² As noted, the State concedes that the trial court erred in failing to merge the sentences for the reckless endangerment and first-degree assault convictions.

In analyzing the required evidence test, we look first to the statutes under which the appellant was found guilty. The relevant elements of first-degree assault are set forth in Md. Code Ann., Crim. Law § 3-202(b)(1):

(b)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.

This subsection encapsulates the serious physical injury modality of the first-degree assault statute. *Marlin v. State*, 192 Md. App. 134, 158 (2010).

Md. Code Ann., Crim. Law § 3-204(a)(1) provides:

(a) A person may not recklessly:

(1) engage in conduct that creates a substantial risk of death or serious physical injury to another.

Reckless endangerment is an inherently inchoate crime. *Williams v. State*, 100 Md. App. 468, 480 (1994). The required evidence test is used to determine whether offenses arising out of the same act merge for double jeopardy purposes.³ *Id.* The required evidence

² The rule of lenity is a matter of statutory construction that amounts to an alternative basis for merger and is applied to resolve an ambiguity as to whether the legislature intended multiple punishments for the same transaction. *Marlin v. State*, 192 Md. App. 134, 167 (2010).

³ The Fifth Amendment of the United States Constitution provides, in pertinent part: “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. The double jeopardy clause of the Fifth Amendment is applicable to the States pursuant to the Fourteenth Amendment. *Benton v. Maryland*, 395 U. S. 784, 794 (1969).

test focuses on the elements of each offense. *Id.* “[I]f all of the elements of one offense are included in the other offense, so that the latter offense contains a distinct element or distinct elements, the former merges into the latter. *Id.* (quoting *State v. Lancaster*, 332 Md. 385, 391 (1993)).

In *Marlin*, the defendant was found guilty, *inter alia*, of first-degree assault and reckless endangerment. 192 Md. App. at 140. These convictions arose out of an incident in which the defendant shot one Derrick Williams in the back. *Id.* We concluded that reckless endangerment can merge into the crime of first-degree assault under the causing or attempting to cause physical harm modality if the *mens rea* and *actus reus* of the reckless endangerment ripen into the specific intent to cause or attempt to cause serious bodily injury. *Id.* at 165.

“It is undisputed that a specific intent to do harm is not part of the *mens rea* of reckless endangerment.” *Williams*, 100 Md. App. at 501. The *mens rea* of reckless endangerment is conscious disregard or wonton indifference to the consequences of one’s action. *Id.* at 474. Although the *mens rea* of reckless endangerment relates to the nature of the act, it is not incompatible with the *mens rea* of a specific intent to inflict harm. *Id.* at 476. The greater proof of the specific intent offense does not negate the *mens rea* of reckless endangerment, rather it subsumes it. *Id.* at 478.

“It is also clear, however, that even if the crime of reckless endangerment and the crime of unintended battery are not ‘the same offense,’ multiple punishment will nonetheless be prohibited, and merger will still be required in those particular instances

where the inchoate crime of reckless endangerment has ripened into an instance of the consummated crime of unintended battery.” *Id.* at 489.

In *Monoker v. State*, our Supreme Court noted that it is fundamentally unfair to require a defendant to suffer twice, once for the greater crime and once for the lesser included offense of that crime. 321 Md. 214, 223–24 (1990). “The crime involving potential harm will merge into the crime involving actual harm on an *ad hoc* basis, even if not as a universal principle of double jeopardy law.” *Williams*, 100 Md. App. at 490. In other words, whether reckless endangerment merges into first-degree assault is fact specific.

In this case, the elements of Mr. Goss’s conviction for reckless endangerment were his brandishing of a knife and putting it in the face of Mr. Francis. These actions readily transposed into the elements of his conviction for first-degree assault, stabbing Mr. Francis in the face. There is no distinction between the evidence that was used to convict Mr. Goss of reckless endangerment and the evidence used to convict him of first-degree assault. Accordingly, the conviction of reckless endangerment merged with the conviction of first-degree assault for the purpose of sentencing. Therefore, we vacate the sentence for reckless endangerment. Since we have determined that the sentence be vacated on the required evidence test, we do not address Mr. Goss’s arguments related to the rule of lenity.

III. Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI. Article 21 of the Declaration of Rights

of the Maryland Constitution provides, “in all criminal prosecutions, every man hath the right . . . to be allowed counsel.” Md. Const. Decl. of Rts. art 21. The Sixth Amendment guarantee of counsel is a guarantee of effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A person who happens to be a lawyer and is present is not sufficient. *Id.* at 685. Counsel must play a role that is critical to the adversarial system’s producing just results. *Id.*

Mr. Goss argues that he had ineffective assistance of counsel because his attorney did not argue to the trial court that there was insufficient evidence to convict him of carrying a concealed weapon under Md. Code Ann., Crim. Law § 4-101(a)(5)(ii). The State counters that consideration as to whether there was ineffective assistance of counsel should be determined through the post-conviction process, Md. Code Ann., Crim. Proc. § 7-101, *et seq.*, because trial counsel may have had a valid tactical reason not to have argued that point.

A post-conviction proceeding may be the most appropriate way to address ineffective assistance of counsel. *Testerman v. State*, 170 Md. App. 324, 335 (2006). However, we may address a claim of ineffective assistance of counsel when the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim. *Id.* Where there is no need for a collateral fact-finding process, review on direct appeal may be appropriate. *Id.*

Mr. Goss claims that he was denied effective assistance of counsel because his trial attorney failed to argue with particularity that the State had failed to prove the knife that he wielded was not a penknife without a switchblade. Md. Code Ann., Crim. Law § 4-

101(c)(2). Md. Code Ann., Crim. Law § 4-101(a) specifies that a weapon does not include a penknife without a switchblade. Testimony that describes a knife, but does not specify that it was not a penknife, is insufficient to support a conviction under § 4-101(c)(2). *Washington v. State*, 293 Md. 465, 475 (1982). To establish that the appellant carried a dangerous weapon, the State was required to prove beyond a reasonable doubt that the knife did not fall within the penknife exception. *Thornton v. State*, 162 Md. App. 719, 736 (2005), *rev'd on other grounds*, *Thornton v. State*, 397 Md. 704, 742 (2007).

As noted, at the close of the State's case, trial counsel moved for a judgment of acquittal and argued that "the identification of my client as being involved in this incident is unreliable and otherwise I submit on the evidence presented." Trial counsel recognized that the evidence was to be taken in the light most favorable to the State and submitted.

Strickland held that "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." 466 U.S. at 686. Ineffective assistance of counsel has two components. *Id.* at 687. First, the defendant must establish that counsel's performance was deficient. *Id.* Second, the defendant must show that counsel's deficient performance prejudiced his defense. *Id.*

The State argues that a post-conviction proceeding is the appropriate way to consider whether trial counsel's performance was deficient. In this regard, the State argues that the trial strategy was that someone else had stabbed Mr. Francis. The State's argument misses the point. Evidence that the knife was not a penknife is a required element of proof in the crime carrying a dangerous weapon. *Washington*, 293 Md. at 475. Had trial counsel

pointed out the State's failure of proof on that count, Mr. Goss would have been acquitted on that count. Even in the light most favorable to the State, the State had failed to prove that the knife was not a penknife. The only evidence about the knife was Mr. Francis's testimony that it was black had a blade and a handle. There was no evidence that the blade could not fold back into the handle. It is also clear that Mr. Goss was prejudiced because he was convicted of carrying a weapon and received a sentence for a crime for which the State offered insufficient evidence. We conclude that Mr. Goss had ineffective assistance of counsel on this issue and was prejudiced thereby. Accordingly, we reverse the conviction for carrying a dangerous weapon.

IV. Inquiry Regarding Possible Discharge of Counsel

The trial judge noticed a heated discussion between Mr. Goss and his attorney. The trial judge advised Mr. Goss not to have such displays in front of the jury because they might affect his case. The trial judge then allowed Mr. Goss the opportunity to talk to his attorney.

Generally, Maryland Rule 4-215(e) sets forth the procedure for a criminal defendant to discharge counsel. *State v. Campbell*, 385 Md. 616, 628 (2005). Our Supreme Court concluded that Rule 4-215(e) does not apply to decisions to discharge counsel after meaningful trial proceedings have begun. *State v. Brown*, 342 Md. 404, 428 (1996). The difference in treatment after meaningful trial proceedings have begun is intended to prevent mistrials and avoid confusing the jury. *Id.* at 427. There is no bright line to delineate when meaningful trial proceedings have begun, however. *Id.* at 423. After the trial has begun, the trial court has broad, but not limitless, discretion to consider a request to discharge

counsel. *Id.* The standard is an abuse of discretion. *Id.* at 429. An abuse of discretion occurs when the decision of the trial court is so untenable as to place it beyond the fringe of what is minimally acceptable. *State v. Hardy*, 415 Md. 612, 621–22 (2010). If electing to discharge counsel, a defendant must be afforded the opportunity to explain why he or she wishes to discharge counsel. *Id.* at 629.

In this case, when the trial court had its colloquy with Mr. Goss, meaningful trial proceedings had begun. In *Hardy*, our Supreme Court held that there are meaningful trial proceedings when voir dire commences. 415 Md. at 627. In the instant case, the colloquy took place after two witnesses had testified for the State. These witnesses established a narrative of the alleged crime and an identification of Mr. Goss. It is beyond cavil, that meaningful trial proceedings had begun.

A court must determine if a defendant's comments about his attorney are to be construed as a request to discharge counsel. *Id.* at 628. In *Snead v. State*, our Supreme Court held that any statement from which a court could reasonably conclude that a defendant desired self-representation was sufficient for an examination as to the defendant's reasons. 286 Md. 122, 127 (1979). There is no talismanic phrase that a defendant need utter to indicate a desire for self-representation. *Leonard v. State*, 302 Md. 111, 124 (1985). After the trial court explained to him not to say anything that might be detrimental to his case, Mr. Goss told the court:

Yeah, I just wanted to say like with the representation of my attorney, I asked him to ask a certain amount of questions, and he only asked two or three questions about the photo array, and that's not what I asked him to do, so. And that's just what I really wanted to say because I'm not happy. I wasn't happy with the questioning. That's what it's really basically about, I wasn't

happy at all, and he ignoring me, telling me I'm not an attorney and this that, but he's working for me technically, you know what I mean. He's supposed to be in my best interest, and I don't feel like that's happening right now.

And, I mean, that's my concerns for like that's – it's – I'm the one that's, you know, facing these charges, me, not him, so he got a non-caring attitude and telling me I'm not an attorney, I'm not this, I'm not not, but I understand what's going on, the magnitude of the situation. So I'm trying to tell him like if I feel like you should ask certain questions, like, I'm listening, and I feel like you should ask certain questions, you should open up and ask at least one or two of the questions I'm asking you to ask, you know what I'm saying, like. And he's not doing that, he just ignoring me, and I really feel concerned about that. I'm concerned about that.

The trial court clearly took these statements seriously. In allowing Mr. Goss to vent his apparent frustration with his attorney, the court met its obligation to provide Mr. Goss an opportunity to state his complaints about counsel. *Hardy*, 415 Md. at 629. In response to these statements, the trial court explained to Mr. Goss that his attorney had a level of understanding that he might find frustrating. The trial court pointed out, in essence, that his attorney was using his opportunity to cross-examine to pin the witness into statements that fit his case. Thus, as the court explained, his attorney did not want to step in a trap of allowing a witness to provide too much information.

Brown suggests several factors that a trial court should consider when a defendant seeks the discharge of counsel during a trial:

(1) the merit of the reason for discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

342 Md. at 428. In this case the trial court listened carefully to Mr. Goss's reasons for discharge and explained to him that his attorney's questions were consistent with his

apparent trial strategy. The trial court also noted that Mr. Goss's attorney was a good lawyer. The colloquy began because the trial court noticed that Mr. Goss was having a heated conversation with his attorney and admonished him not to do anything in front of the jury that might damage his case. This request came after two witnesses had testified, and the trial court was clearly sensitive to possible disruption of the proceedings. By the end of the colloquy, Mr. Goss said, "I'm good." We conclude that the trial court properly handled Mr. Goss's concerns, and, that to the extent there was a request to discharge counsel during trial, the trial court did not abuse its discretion in denying that request.

V. Conclusion

In summary, we conclude that the trial court erred in failing to merge the sentence for reckless endangerment with the sentence for first-degree assault because all of the facts to prove the elements of reckless endangerment were included in the facts of the first-degree assault. We also conclude that Mr. Goss was denied effective assistance of counsel when his trial attorney failed to move for a judgment of acquittal on the carrying a dangerous weapon count because the State failed to produce evidence that the penknife exception did not apply. We find no error in the trial court's handling of Mr. Goss's misgivings about his attorney. Accordingly, we vacate the sentence for reckless endangerment, reverse the conviction for carrying a dangerous weapon, but otherwise affirm.

**SENTENCE FOR RECKLESS
ENDANGERMENT VACATED.
CONVICTION FOR CARRYING A
CONCEALED WEAPON REVERSED.
JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY OTHERWISE AFFIRMED.
COSTS TO BE PAID BY ONE-HALF BY
APPELLANT AND ONE-HALF BY
PRINCE GEORGE'S COUNTY.**