Circuit Court for Montgomery County
Case No. 131658

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2528

September Term, 2018

SAMUEL F. BROWN

v.

STATE OF MARYLAND

Berger,
Nazarian,
Reed,

JJ.

Opinion by Nazarian, J.

Filed: April 16, 2020

Samuel F. Brown, Jr. was convicted in the Circuit Court for Montgomery County of offenses related to attempted murder and armed robbery. He argues on appeal that he invoked his right to counsel during his police interrogation and that he received unconstitutionally ineffective assistance of counsel when his trial counsel (1) failed to make a proper motion to suppress Mr. Brown's confession, and (2) failed to object to the detective's misleading statements during Mr. Brown's police interrogation. We agree that Mr. Brown invoked his right to counsel, but find that he waived that invocation before the trial court when he filed general suppression motions and didn't ask for any particular statement or set of statements to be suppressed. Additionally, we agree that police lied to Mr. Brown about whether he had access to an attorney and otherwise behaved improperly, but we find that trial counsel failed to preserve that issue. And although Mr. Brown's counsel may have been ineffective, we decline to address that possibility on direct appeal, and we affirm his convictions.

I. BACKGROUND

A. The Robbery

On the afternoon of February 10, 2017, police responded to a shooting in a residential area of Montgomery County. At the scene, police discovered the crumpled body of Wassi Young riddled with bullets and contorted on the pavement. He was strewn between two cars in the parking lot, one of which, a white Toyota Corolla, belonged to Edgar Garcia-Gaona. The K-9 unit discovered Mr. Brown's cell phone. Police also located Mr. Brown's rental car, a Hyundai Sonata.

Mr. Garcia-Gaona had been hit several times too, but he survived, and his sister,

Cira, drove him to the hospital. Police interviewed them both there. On March 2, 2017, Mr. Garcia-Gaona identified Mr. Brown from a photo array while in the hospital as someone involved in the shooting.

On March 8, 2017, police interrogated Mr. Brown about the robbery that took place on February 10. According to Mr. Brown, he and three acquaintances, Wassi Young, Davion Foster, and Tierek Thomas, planned to rob a drug dealer. When they arrived in Montgomery County, they met up with a couple others, including Shiloh Young. Mr. Brown told police that Shiloh Young then called Edgar Garcia-Gaona and asked Mr. Garcia-Gaona to sell him some drugs. Mr. Garcia-Gaona drove to meet them, and when he arrived, Mr. Brown got into the front passenger seat and Wassi Young sat in the back.

What happened next is disputed. Mr. Brown told police that the "other two guys," Davion Foster and Tierek Thomas, got into his rental car and pulled it behind Mr. Garcia-Gaona's car, blocking it in. Then Mr. Garcia-Gaona pulled a gun and Mr. Brown jumped out of the car. Mr. Brown observed Wassi Young and Mr. Garcia-Gaona, with guns in hand, "wrestling in the car."

Mr. Garcia-Gaona, on the other hand, told police that Mr. Brown and Wassi Young pulled out guns when they entered his car. He stated that the men who blocked him in with Mr. Brown's rental car, later identified as Mr. Foster and Mr. Thomas, got out of the rental and began firing into Mr. Garcia-Gaona's car.

Regardless of the progression, gunfire erupted. Mr. Garcia-Gaona shot Wassi

Young twice. Wassi Young's earlier coconspirators, Davion Foster and Tierek Thomas, shot him five more times while standing outside the car. Mr. Garcia-Gaona pushed Wassi Young's body into the parking lot. Then, Mr. Garcia-Gaona left his car, which was still blocked in, jumped into Mr. Brown's then-unoccupied rental car, and drove away. Mr. Brown initially chased his rental car on foot but stopped. He ran from the scene, dropping his cell phone in the process.

Police charged Mr. Brown with (1) first-degree murder of Wassi Young, (2) attempted first-degree murder of Edgar Garcia-Gaona, (3) attempted armed robbery, (4) conspiracy to commit armed robbery, (5) felony firearm use in the commission of a violent crime, and (6) conspiracy felony firearm use in the commission of a violent crime.

B. Mr. Brown's Confession

1. Requests for Counsel

Detectives Dimitry Ruvin and Randy Kuson interviewed Mr. Brown on March 8, 2017, and Mr. Brown's videotaped confession was entered into evidence at trial. Mr. Brown was detained for about six hours. Detective Ruvin read Mr. Brown his *Miranda*[1] rights within the first couple minutes of the interview and filled out a form documenting that Mr. Brown understood his rights. During the interview, Mr. Brown mentioned an attorney several times. Sometime after these references, he provided the substance of his confession. The State relied heavily on Mr. Brown's confession at trial.

Mr. Brown referenced an attorney a total of six times during his police interview.

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

Most references came in the form of questions:[2]

1. "You don't think [] it would be better if I had a lawyer right now?"[3]

2. "And I can't answer these questions with like, a lawyer?"[4]

[2] This Court reviewed and transcribed Mr. Brown's interview with Detectives Ruvin and Kuson.

[3] Mr. Brown's full comments were:

> MR. BROWN: You don't think [] it would be better if I had a lawyer right now?
>
> DETECTIVE RUVIN: I mean it's certainly—
>
> MR. BROWN: I'm just, I'm really just scared. I don't want to be uncooperative.
>
> DETECTIVE RUVIN: No, I completely understand that and it's certainly something that you have to decide, you know what I mean, like, that's absolutely fine but I'm just trying to tell you is, that we got a warrant for you, and um, I was hoping that you could explain a couple of things, right? So basically, your car was there, your phone was there, so we know you were there. So, you kinda have to answer a few things because otherwise, we just gotta go with the charges and what other people tell us.

[4] Mr. Brown's full comments were:

> DETECTIVE RUVIN: So we gotta figure out how your car got there, what happened, how you lost your phone, and in that part of the story, you could tell us, "I didn't kill nobody." I get it, but again, we gotta have a story. Cause if we don't have a story, I can't just go, . . . "He didn't kill nobody." But he drove, so he has to tell us why he drove.
>
> MR: BROWN: And I can't answer these questions with like, a lawyer?
>
> DETECTIVE RUVIN: You could, absolutely, man, you could—
>
> MR. BROWN: But that would take a long process.
>
> DETECTIVE RUVIN: It's, it's, it's completely up to you and your decision. We have a job to do. You have your own thing

3. "I wish I had, like, a lawyer to ask, 'What should I do?'"[5]

4. "I can't just tell y'all with a lawyer?"

5. "I can't have a lawyer in here?"

In addition to these questions, Mr. Brown engaged in the following exchange with Detective Ruvin about having a lawyer present during the interview:

> DETECTIVE RUVIN: Dude, if we're missing something, just tell us, man. What do we have wrong?
>
> MR. BROWN: **I feel like I shouldn't say nothing without my lawyer.** But I'm just scared, like, what if it's my last chance to say something, you feel me?
>
> DETECTIVE RUVIN: I feel you.

> going. I appreciate what you're going through because trust me, I've sat across plenty of people in your position, and sometimes they make that choice [to get a lawyer] and sometimes they don't.
>
> MR. BROWN: I don't even have money for this.
>
> DETECTIVE RUVIN: Sam, Sam, let's just figure this out.

[5] Mr. Brown's full comments were:

> MR. BROWN: I wish I had some type of comfort in here. I wish I had, like, a lawyer to ask, "What should I do?" If I had a lawyer to ask, "What should I do?" I would do whatsever best for me, because at the end of the day, whoever's—whoever's involved don't give a fuck about me.
>
> DETECTIVE RUVIN: You really don't think people give a fuck about you?
>
> MR. BROWN: No, I'm not talking about you, I'm talking about whoever's involved.
>
> DETECTIVE RUVIN: Oh, other people? Absolutely not. Not for a second, man. I mean, you got me. That's what you got right now. You got me that wants to get the truth. And I think I know the truth, but I can only say, "I think." And I can't guess.

> MR. BROWN: **I just want my lawyer to sit here.**[6] I didn't kill nobody. It's crazy that I could go to prison for not killing anybody.
>
> DETECTIVE RUVIN: That would not be fair.
>
> MR. BROWN: That that's a consequence—it's crazy. I swear to god, I didn't kill nobody. . . .

(emphasis added). Detective Ruvin didn't stop questioning Mr. Brown after he mentioned wanting a lawyer to sit in the interrogation room. Instead, he continued questioning until Mr. Brown offered the substance of his confession.

2. Detective Ruvin's Misleading Statements About Access To An Attorney

In addition to ignoring Mr. Brown's statement about wanting an attorney, Detective Ruvin advised Mr. Brown incorrectly about the process. In the following exchange, Mr. Brown asked whether he could talk to police with an attorney present, and Detective Ruvin misleadingly told him no:

> MR. BROWN: I can't just tell y'all with a lawyer?
>
> DETECTIVE RUVIN: You can, absolutely.
>
> MR. BROWN: But would that help me?
>
> DETECTIVE RUVIN: Well, if you want a lawyer, then I have to leave. Like, once you request an attorney—
>
> MR. BROWN: I can't have a lawyer in here—
>
> DETECTIVE RUVIN: Well, I, I mean, do you have—
>
> MR. BROWN: --before I go to the Commissioner?
>
> DETECTIVE RUVIN: I mean, [] do you have a lawyer? **Like how are we gonna get a lawyer here?** So basically, the way it works is, you say, "I want a lawyer," basically, I gotta stop

[6] Based on listening to the audio, there is a possibility that Mr. Brown says, "I just want my lawyer to say—," before trailing off and ending his thought. Either way, Mr. Brown did not frame the comment as a question.

> talking to you.
>
> MR. BROWN: And go call my lawyer?
>
> DETECTIVE RUVIN: **No, I'm not gonna call your lawyer. You're gonna go to CPU.**[7]
>
> MR. BROWN: **I can't talk to my, talk to y'all while my lawyer here?**
>
> DETECTIVE RUVIN: **Once you get [to CPU], you can do whatever you want.**
>
> MR. BROWN: **I thought I could talk to y'all while my lawyer here.**
>
> DETECTIVE RUVIN: **No, that's not gonna happen.**
>
> MR. BROWN: **I can't?**
>
> DETECTIVE RUVIN: **No, like, nah.** And to be honest with you, like, I really don't wanna, like, cause you have rights, right? And I read you your rights, you understand them, like. There's nothing to it, it's nothing personal. Once you say, "I want an attorney," I can't really talk to you.
>
> MR. BROWN: Yeah, so this whole situation—
>
> DETECTIVE RUVIN: Yeah, so basically, you gonna go through the process and you gonna get an attorney, whether you can, you know, that thing said, whether you can afford one, they'll appoint one for you. Aight?

C. The Defense's Motion to Suppress Confession and Trial

On March 31, 2017, the same day he entered his appearance on Mr. Brown's behalf, defense counsel filed an "Omnibus Motion Pursuant to Maryland Rule 4-252." The motion included a general paragraph arguing that any confessions should be suppressed for several reasons:

> All judicial and pretrial extrajudicial identifications [should] be suppressed because they are based upon (1) an illegal arrest, (2) a violation of the defendant's right to counsel, and (3) a

[7] "CPU" stands for the Central Processing Unit.

> violation of the defendant's right to due process because (a) all identifications were so unnecessarily and impermissibly suggestive as to give rise to a substantial likelihood of irreparable misidentification, and (b) any in-court identification lacks a source independent of the illegal pretrial confrontation or viewing and constitutes fruit of the poisonous tree.

The motion requested more broadly that "[a]ll admissions, statements, or confessions be suppressed because they were [u]nlawfully obtained." Later, on May 12, 2017, defense counsel filed a "Motion to Suppress Statements." That motion listed a variety of theories, but no facts or arguments tying it to any specific case or confession:

> 1. All statements were obtained as a result of an illegal arrest or detention.
>
> 2. All statements were obtained in violation of the Defendant's right to counsel under the sixth amendment to the United States Constitution and Article 26 of the Maryland Declaration of Rights.
>
> 3. All statements were obtained in violation of the Defendant's privilege against self-incrimination under the Fifth Amendment to the United States constitution and Article 22 of the Maryland Declaration of Rights.
>
> 4. All statements were the product of improper promises, threats, or inducements.
>
> 5. All statements were obtained in violation of due process of law guaranteed by the fifth and fourteenth amendments to the United States Constitution and Article 22 of the Maryland Declaration of Rights.
>
> 6. All statements were obtained from the Defendant during a period of unnecessary delay in producing him before a judicial officer, or obtained after that period and tainted by it.

Neither motion provided specific factual grounds supporting the conclusory statements.

The State produced discovery to defense counsel in June 2017 that included a copy

of Mr. Brown's police interview. The court scheduled a hearing on the Rule 4-252 motion and the motion to suppress the statement on August 17, 2017. The trial court postponed the hearing on the motion to suppress several times, at least twice due to ongoing discovery. Trial was postponed at the recommendation of the court to April 2, 2018.

On March 1, 2018, the State filed a "Motion to Require Compliance with Rule 4-252(e)." The State argued that defense counsel's motions didn't comply with Rule 4-252(e) because they "fail[ed] to sufficiently state the grounds" upon which the motions were made and asked the court to compel the defense to supplement the motions. Defense counsel didn't respond to the State's motion. Instead, he wrote the State an email saying that he wished to "litigate" the motions, without providing any factual grounds. The court scheduled a motions hearing for March 23, 2018. That hearing was postponed from March 23, 2018 to March 30, 2018 at the joint request of the parties. The court then "remove[d]" the March 30th hearing without stating a reason.

Trial began on April 2, 2018, and defense counsel argued the pending motions to suppress statements as a preliminary issue. After expressing dissatisfaction with defense counsel's filings, the court attempted to explain the difference between an omnibus motion and a particularized motion:

> THE COURT: Okay. Have you filed a particularized motion on this?
>
> [DEFENSE COUNSEL]: Your Honor I tell you we filed omnibus motion, we filed request for discovery, we filed motion to suppress statements, we filed motion to suppress physical evidence, the request right here.
>
> THE COURT: Okay. So, when the State says that they haven't

> received a particularized motion do you agree with that?
>
> [DEFENSE COUNSEL]: Well, Your Honor, particularized in terms of?
>
> THE COURT: Well . . . when you file an omnibus motion you're preserving your right to challenge the statement. And then a particularized motion would be that the defendant gave a statement on such and such a date and there were portions of that statement that where his rights were violated because of X, Y or Z. Either he wasn't advised of his rights or it was involuntarily made because of these reasons or I don't know what the claim was in this case. But usually a particularized motion would set forth the actual factual basis as opposed to just the legal statement. And then if there's any case law to support that or any specific legal principles that would support the motion to suppress, that would put the Court and the State on notice as to what it is that you're challenging.
>
> [DEFENSE COUNSEL]: Your Honor, when I initially [] filed our motion obviously we have not even gotten the discovery to even—
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: —look at the statement to make an argument as to what it was.[8]
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: But we wanted to protect his rights.
>
> THE COURT: All right. And so, you received then the statement that you've looked at?
>
> [DEFENSE COUNSEL]: Yes, we have.
>
> THE COURT: So, after that happened, **did you file a particularized motion to alert anyone as to what specifically you were complaining about?**
>
> [DEFENSE COUNSEL]: **No, Your Honor. . . .**

(emphasis added).

[8] The omnibus motions were filed in March and May 2017. The State produced discovery in June 2017, ten months before trial.

After learning that defense counsel never filed a particularized motion, the court explained that a motion to suppress a statement is a "mandatory" motion under Rule 4-252(a)(4):

> THE COURT: [] I'm just trying to get a factual history . . . this is a mandatory motion because it deals with a statement made. And under the rules a mandatory motion has to be filed within 30 days of the appearance of counsel or within five days after discovery is obtained that discloses the basis for it. So, forget about when you started in this case last year or when discovery was sent out.
>
> [DEFENSE COUNSEL]: All right. Okay.
>
> THE COURT: Let's start with two weeks ago.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: So, two weeks ago if you got the discovery and you could look at the statement and you can then determine what was the basis for the motion to suppress, the rules says that you have to file a particularized motion within five days of that date. And that the motion has to be in writing, it has to set forth the ground for the motion to suppress and it has to [be] accompanied by a statement of points and authorities. So, that's the part of the rule I'm dealing with.

The court then asked whether defense counsel had good cause for failing to file a particularized motion, but defense counsel had no explanation. Nonetheless, the court attempted to draw out the facts underlying defense counsel's motion to ascertain if there were grounds for suppression:

> THE COURT: What's the factual basis for your claim that the statement was obtained in violation of the defendant's right to counsel? When did that happen? How did it happen?
>
> [DEFENSE COUNSEL]: He requested, in our view, he requested counsel in the statement at least I counted maybe four times.
>
> THE COURT: Okay.

> [DEFENSE COUNSEL]: Others may have counted five or six.[9]
>
> THE COURT: **So, that's not in your motion.** That's not set forth in your motion as to how it happened, where it happened, when and how it happened, how it happened and then what the law is that supports that.
>
> [DEFENSE COUNSEL]: **Exactly**. But again, Your Honor, as of May 12 as the Court has indicated, we didn't have the statement at that time.
>
> THE COURT: Right.

(emphasis added).

Defense counsel argued that the State was not surprised or prejudiced by his argument, which the court found irrelevant to their discussion. Defense counsel proffered the following instances where Mr. Brown mentioned an attorney, but failed to include his most unequivocal statement:

> THE COURT: Okay. And specifically, what did he say on the tape that you believe was his request for invocation of counsel? What are the words he used?
>
> [DEFENSE COUNSEL]: Okay, for example, shouldn't I get a Public Defender at one point, I think at 18:13. . . .
>
> THE COURT: Okay, so **he asked the question** shouldn't I get a Public Defender.
>
> [DEFENSE COUNSEL]: **Exactly**.
>
> THE COURT: Okay, what else?
>
> [DEFENSE COUNSEL]: And then at 17:34 he asked, you don't think it would be better if I had a lawyer? At 17:43, Can I answer these questions with a lawyer present, or something to that effect, that's what I wrote down. At 19:15, I wish I had a lawyer to answer these questions.
>
> THE COURT: Okay.

[9] Defense counsel doesn't elaborate on to whom he's referring.

> [DEFENSE COUNSEL]: Okay. Then at 19:43 he said I can't tell you with a lawyer, with the emphasis on with a lawyer **which shows more of a question than a statement.** And then he said, I thought I could talk to you all with a lawyer.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: Now, the issue for the Court would be whether it's unambiguous or not but those were the, at least I counted four or five times he mentioned a lawyer.
>
> THE COURT: Okay. **So, all those are questions, they're not statements or—**
>
> [DEFENSE COUNSEL]: **Exactly.**
>
> THE COURT: All right.

(emphasis added). Again, defense counsel didn't mention to the court that Mr. Brown said, "I just want my lawyer to sit here."

The State argued that the defense had had the opportunity to review both the statement and the State's motion requesting a particularized motion. The court found that the defense waived its right to counsel claim by failing to file a written motion because the filing was required under Rule 4-252 "within 30 days of the appearance of counsel or within five days after discovery was furnished giving rise to that [mandatory] motion."

At trial, Mr. Brown was found guilty of (1) attempted murder of Edgar Garcia-Gaona, (2) armed robbery with a dangerous weapon, (3) conspiracy to commit a robbery with a dangerous weapon, (4) use of a handgun in the commission of a felony or crime of violence, and (5) conspiracy to use a handgun in the commission of a felony or crime of violence.

II. DISCUSSION

The trial court found that Mr. Brown waived his right to counsel claim and admitted

his confession. Mr. Brown raises five Questions Presented that we consolidate.[10] *First*, did the court abuse its discretion when it found that Mr. Brown waived his right to counsel claims? *And second*, did Mr. Brown receive ineffective assistance of counsel?

A. Mr. Brown Unequivocally Invoked His Right To Counsel During His Confession, But Defense Counsel Waived The Claim.

Mr. Brown argues that he invoked his right to counsel unequivocally and that the court erred by failing to suppress his confession. The State doesn't argue the merits but responds that the issue should be handled on post-conviction.

"Upon reviewing a suppression hearing court's decision to grant or deny a motion to suppress, we limit ourselves to considering the record of the suppression hearing." *Small v. State*, 464 Md. 68, 88 (2019). We review the evidence and any reasonable inferences in

[10] Mr. Brown stated the Questions Presented in his brief as follows:

> 1. Is the statement "I just want my lawyer to sit here" a clear and unequivocal invocation of Mr. Brown's right to counsel?
>
> 2. Are Detective Ruvin's and the State's repeated comments on and references to Mr. Brown's post-*Miranda* silence a violation of the rule announced in *Coleman v. State*, 434 Md. 320 (2013)?
>
> 3. Did Detective Ruvin's statements that Mr. Brown could not get an attorney until trial and that he could not talk to detectives with an attorney present violate *State v. Luckett*, 413 Md. 360 (2010), state law or impermissibly induce Mr. Brown's confession?
>
> 4. Was it harmless error to admit Mr. Brown's incriminating statements at trial?
>
> 5. Does this case fall within the exception to the general rule that ineffective assistance of counsel should be brought on post-conviction proceedings?

the light most favorable to the prevailing party, here, the State. *Vargas-Salguero v. State*, 237 Md. App. 317, 336 (2018). Conclusions of law are reviewed *de novo*. *Small*, 454 Md. at 88.

Defense counsel filed two general motions to suppress and failed to respond to the State's motion requesting a more particularized motion to suppress, and the court ruled that Mr. Brown waived his right to counsel argument under Rule 4-252. Maryland Rule 4-252 provides that in the circuit court, "[a]n unlawfully obtained admission, statement or confession" "shall be raised by motion in conformity with [Rule 4-252] and if not so raised [is] waived unless the court, for good cause shown, orders otherwise." Md. Rule 4-252(a). The Rule requires further that such a motion "shall be filed within 30 days after . . . appearance of counsel . . . except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished." Md. Rule 4-252(b). Motions under the rule "shall be in writing . . . , shall state the grounds upon which it is made, and shall set forth the relief sought." Md. Rule 4-252(e).

A central question before the suppression court was whether defense counsel complied with Maryland Rule 4-252, and if not, whether he could show good cause for the failure which would allow the court to hear the motion. *See Sinclair v. State*, 444 Md. 16, 30 (2015) ("Although Rule 4-252 is unambiguous in setting a time limit and requiring some detail as to the basis for a suppression motion, it also grants trial courts discretion to hear noncompliant motions 'for good cause shown.'"). The defense filed an omnibus motion when counsel entered his appearance on March 31, 2017, and at that time, the State had

not yet provided discovery that would give counsel the information necessary to raise specific grounds for the motion. The State provided the defense with Mr. Brown's confession on June 22, 2017, and counsel had the factual bases for a motion to suppress the statement from that point forward. *See* Md. Rule 4-252(b). But counsel failed to file a particularized motion within five days of June 22, 2017; in fact, he never filed one at all.

Ten months later, during pre-trial motions, counsel sought to argue the specific facts for the first time. Defense counsel clearly missed the five days he was allotted to file a particularized motion under the Rule and offered no explanation. He argued only that he struggled to "download" the discovery on March 26, 2018, one week before trial began.

Despite defense counsel's failure to comply with the Rule, the court nevertheless allowed him to argue his motion. However, defense counsel only informed the court of the following statements, in his own words:

- [S]houldn't I get a Public Defender
- [Y]ou don't think it would be better if I had a lawyer
- Can I answer these questions with a lawyer present
- I wish I had a lawyer to answer these questions
- I can't tell you with a lawyer (with the emphasis on with a lawyer)
- I thought I could talk to you all with a lawyer

Defense counsel didn't mention Mr. Brown's most unequivocal statement requesting counsel, that he "just want[ed] a lawyer to sit here" during his interrogation. Instead, he mentioned only Mr. Brown's equivocal questions about attorneys, which, by themselves,

wouldn't invoke the right to counsel. *See Ballard v. State*, 420 Md. 480, 490 (2011) (holding that the accused's invocation of the right to counsel cannot be equivocal or ambiguous).

We cannot think of any reason why defense counsel would choose not to proffer Mr. Brown's clearest, most unequivocal request for counsel. Regardless, Mr. Brown's argument that he invoked his right to counsel wasn't before the suppression court, and the circuit court did not err in finding that argument waived. *See Sinclair*, 444 Md. at 31 (holding that a timely omnibus motion that failed to provide factual allegations or legal authority to suppress specific evidence did not meet the requirements of Rule 4-252).

B. Other Ineffective Assistance of Counsel Arguments

Next, Mr. Brown argues that he received ineffective assistance of counsel and that this Court should reach that conclusion on direct appeal. The State argues that the facts have not been adequately developed and that these arguments should be raised in a post-conviction proceeding. We agree with the State.

The Sixth Amendment guarantees criminal defendants the right to counsel. U.S. Const. amend. VI. "The right to counsel is the right to the effective assistance of counsel." *Coleman v. State*, 434 Md. 320, 334 (2013) (*quoting Harris v. State*, 303 Md. 685, 694 (1983)). Under *Strickland v. Washington*, "[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. 668, 686 (1984). A *Strickland* analysis involves two prongs. *First*, the "defendant

must show that counsel's performance was deficient" by demonstrating that "counsel's representation fell below the objective standard of reasonableness." *Id. Second*, "the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. We determine whether there is a "substantial or significant possibility that the verdict of the trier of fact would have been affected." *Bowers v. State*, 320 Md. 416, 426 (1990) (*quoting Yorke v. State*, 313 Md. 378, 388 (1989)).

This Court rarely considers ineffective assistance of counsel claims on direct appeal. *Bailey v. State*, 464 Md. 685, 703 (2019). In rare instances, we have found that this rule is "not absolute and, where the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim, there is no need for a collateral fact-finding proceeding, and review on direct appeal may be appropriate and desirable." *Id.* (*quoting In re Parris W.*, 363 Md. 717, 726 (2001)).

Mr. Brown argues that defense counsel's performance was so woefully inadequate that we should review the merits of the ineffective assistance of counsel claim on direct appeal, raising the following failures:

> 1. Not filing a proper motion to suppress Mr. Brown's statement after Mr. Brown invoked his right to counsel, resulting in a waiver of the argument,
> 2. Not objecting to Detective Kuson's lies about whether Mr. Brown could consult with an attorney during the interrogation,
> 3. Not objecting when Detective Ruvin and the State referred to periods of silence during Mr. Brown's confession,
> 4. Not objecting when Detective Ruvin induced Mr. Brown's confession by informing him that if he didn't speak up, one of

his co-conspirators would,

5. Not objecting when Detective Ruvin induced Mr. Brown's confession by telling him that he needed "to get to [Mr. Brown's] story" because he couldn't "vouch for both guys," and
6. Not objecting when Detective Ruvin induced Mr. Brown's confession by "preying on Mr. Brown's ignorance of the law."

It's true that defense counsel likely squandered the argument on Mr. Brown's valid invocation of his right to counsel. It's also true that defense counsel never informed the court about Detective Ruvin's lies during Mr. Brown's confession. For example, defense counsel didn't mention that after Mr. Brown asked about getting a lawyer, Detective Ruvin told him, "How are we gonna get a lawyer here?" Surely, Detective Ruvin knew of the mechanics of requesting a public defender, but he chose to mislead Mr. Brown about access to an attorney. Additionally, defense counsel never brought up this exchange, in which Detective Ruvin tells Mr. Brown that he could not talk to the police with his attorney present:

> MR. BROWN: I thought I could talk to y'all while my lawyer here.
>
> DETECTIVE RUVIN: **No, that's not gonna happen.**
>
> MR. BROWN: **I can't?**
>
> DETECTIVE RUVIN: **No, like, nah.**

(emphasis added). Defense counsel inexplicably left these arguments on the table.

That said, these issues are better addressed in post-conviction proceedings where a court can engage in fact-finding to elicit the defense counsel's reasons, if any, behind these decisions. Although we struggle to imagine what counsel's strategic or tactical intent might have been, that's the crux of the problem: it is not appropriate for us to imagine what was

happening in the minds of the actors at the trial court and apply the *Strickland* analysis to our speculation. Mr. Brown's claims deserve to be investigated further, on an appropriate record, in post-conviction proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.