Circuit Court for Carroll County
Case No. 06-K-17-048641

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3258

September Term, 2018

MICHAEL WALTER JONES

v.

STATE OF MARYLAND

Graeff,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: February 3, 2020

*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.

Appellant Michael Walter Jones was convicted by a jury in the Circuit Court for Carroll County of possession with intent to distribute cocaine, two counts of possession of cocaine, possession of a shotgun after having been convicted of a crime of violence, possession of a shotgun after having been convicted of a disqualifying crime, possession of heroin, maintaining a common nuisance, and possession with intent to distribute heroin. Appellant presents the following questions for our review:

> "1. Did the trial court fail to comply with Maryland 4-215(e)?
>
> 2. Was the evidence insufficient to support the conviction for possessing a regulated firearm by a disqualified person?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Carroll County on charges of possession with intent to distribute cocaine, two counts of possession of cocaine, possession of a shotgun after having been convicted of a crime of violence, possession of a shotgun after having been convicted of a disqualifying crime, possession of heroin, maintaining a common nuisance, possession with intent to distribute heroin, and possession of a controlled dangerous substance (tramadol).[1] The jury convicted him of all charged counts. The court sentenced appellant to a term of incarceration of twenty years, all but ten suspended, for possession with intent to distribute cocaine; ten years consecutive, all

[1] The State *nol prossed* the count of possession of tramadol at the end of the State's case.

but five suspended, for possession of a shotgun after having been convicted of a crime of violence; one year concurrent for possession of heroin; one year concurrent for one count of possession of cocaine; twenty years concurrent, suspended all but ten, for maintaining a common nuisance; and twenty years concurrent, suspended all but ten, for possession with intent to distribute heroin.[2]

Appellant's charges resulted from searches on December 5, 2017 of a residence at 1147 Western Chapel Road, New Windsor, Maryland ("1147") and on January 12, 2018, after a police surveillance of the residence on suspicion of drug dealings.

The first search occurred while police followed up on a call placed at 4:53 a.m. on December 5, 2017 about a stabbing in the general area of Western Chapel Road. After talking briefly with an uncooperative victim at the hospital, Anthony Mackie-Harvey, police gathered background information on him and learned of his girlfriend, Tiffany Melton. At around 8:15 a.m., police found a car belonging to Ms. Melton in front of 1147, which was within walking distance from where Mr. Mackie-Harvey was found. Approaching the residence, police saw what appeared to be blood on the front door and porch, which led them to believe that there could be suspects or more victims inside the residence. Police knocked on the side door, following a sign on the front door instructing to use the side door, and heard yelling and voices of multiple people coming from inside.

[2] For sentencing purposes, the court merged the conviction for possession of cocaine into the conviction for possession with intent to distribute cocaine; conviction for possession of a shotgun after having been convicted of a disqualifying crime into the conviction for possession of a shotgun after having been convicted of a crime of violence; and conviction for possession of heroin into the conviction for possession with intent to distribute heroin.

Appellant answered and opened the side door. Police entered the residence, removed seven individuals including appellant and Ms. Melton, and secured the premises.

Around noon that day, police obtained and executed a search warrant at 1147, a small one-level residence owned by appellant's parents and aunt consisting of a kitchen, a living room, two bedrooms, a storage room, and a bathroom. Entry to the residence was customarily through a side door to the kitchen. Inside "Bedroom 1," police found a trail of blood and Mr. Mackie-Harvey's identification card. Inside "Bedroom 2," police found a pair of jeans containing appellant's identification card, mail addressed to appellant, appellant's diploma, a white baggie containing cocaine, and nine clear baggies containing heroin. Inside the storage room, police found seven purple baggies and eleven black baggies containing heroin and cocaine. In the living room, police found a pistol on the futon, digital scales, and drug paraphernalia including crack pipes, Brillo, razors, syringes, baggies, and other packaging materials. On the wall of the living room outside Bedroom 2 were photographs of appellant with his family.

That evening, police charged appellant with possession with intent to distribute cocaine and possession of cocaine. According to police testimony, appellant provided his address as "1147 Western Chapel Road" at his arrest intake.

The second search occurred at 3.45 p.m. on January 12, 2018 when police obtained and executed a no-knock warrant at 1147, following covert surveillance of the residence "starting in the first week of January," during which police observed what appeared to be drug sales between appellant and various individuals pulling up to the residence in vehicles

for short periods of time. Inside the residence, police found eight people: seven including appellant and appellant's friends or acquaintances in the living room and Mr. Mackie-Harvey in Bedroom 1. Police seized $480 in $20 bills in appellant's pocket and a paper fold containing heroin and cocaine underneath his shoelace. In Bedroom 2, police found a shotgun between two beds pushed together, a metal smoking device, and various drug paraphernalia. From the living room, police seized smoking devices, razors, burnt copper Brillo, cigarette packs with drug paraphernalia, scales, and cell phones. There were no fingerprints or other forensic evidence linking the drugs or gun to appellant.

At a bench trial, the State introduced exhibits and expert testimony related to one of the confiscated cell phones and text messages on it. The text messages were between the number on the cell phone and a contact named "Mike Jones" and included code language that police recognized signified drug-related activity. Mike Jones's phone number was the same as the phone number listed on appellant's arrest in-take form, and appellant did not deny that he was the Mike Jones from the text messages.

Appellant testified that he was 47 years old and had resided with his parents all his life at 1043 Western Chapel Road ("1043"), Westminster, Maryland. He testified that he spent five to seven nights per week at that address, which appears on his Maryland State identification card. Appellant testified that his parents and aunt owned the property at 1147, which was in New Windsor, Maryland. Appellant also testified that he was unfamiliar with the arrangement that permitted Mr. Mackie-Harvey to seemingly reside in Bedroom 1 at 1147, that his friends would often stay the night at 1147, and that he would

occasionally visit them at 1147. Appellant explained that he stored his personal items at 1147 because of lack of space at 1043.

Appellant testified that he spent the night at 1147 on December 4, 2017 preceding the first search "to be the mediator between" Mr. Mackie-Harvey and another individual. According to appellant, they were arguing over a loan, and the argument led to Mr. Mackie-Harvey's stabbing. Appellant testified that the gun found during the second search in between the beds in Bedroom 2 belonged to Mr. Mackie-Harvey, who had brought it into 1147 for protection after the stabbing. Appellant denied selling drugs.

On November 14, 2018, the circuit court, sitting as the factfinder, delivered its rulings. Regarding the charge of possession of a shotgun after having been convicted of a crime of violence, the only question for the court was whether appellant possessed the shotgun because appellant stipulated that he was prohibited from possessing a shotgun.[3] Noting that there was no evidence that appellant actually possessed the shotgun, the court found that appellant constructively possessed it "by exercising dominion and control" over it, explaining as follows:

> "I did not find credible the testimony that he used 1147 Western Chapel Road merely as a place to store his memorabilia. I just do not think it is reasonable to expect for example that [appellant] would have stored junk mail there . . . rather than just tossing it out . . . .

[3] Possession of a shotgun is an element of both (1) possession of a shotgun after having been convicted of a crime of violence and (2) possession of a shotgun after having been convicted of a disqualifying crime. Appellant challenges the sufficiency of the evidence that he possessed a shotgun *only* for the latter conviction.

I also did not find the testimony credible that he has not lived there. And it may not be his exclusive residence but I do find that [appellant] resided at 1147 Western Chapel Road, at least between the time period of December 5, 2017 and January 12, 2018. There were any number of individuals who were occupants at that residence on December 5 and January 12 who were friends or acquaintances of [appellant]. It seems unreasonable and unlikely to me that these folks would just be allowed to live there if [appellant] did not also reside there. And . . . the reason or the authority for them living there was never explained to the Court.

[Appellant] was asked whether he had the authority to allow them to live there and he said no. But the question of why they were there or how they would have gotten there in the first place was kind of left unexplained. And I think I can draw a reasonable inference from the evidence that they were there because [appellant] lived there. And he let them live there.

Finally, I do not find . . . credible [appellant's] testimony that he simply allowed Anthony Mackie-Harvey to stash this shotgun in the house. Particularly given that [appellant] knows that [appellant] has prior disqualifying convictions, it is not reasonable to conclude that an individual with those prior disqualifying convictions would take the risk of allowing someone to store a shotgun in the house. It is just not reasonable.

So, I do find that [appellant] resided at 1147 Western Chapel Road . . . I find that . . . based on the evidence that he had dominion and control over the premises because he stored things in that premise. He used it . . . as a storage facility.

I find that the bedroom, what is identified as bedroom number two was [appellant's] bedroom . . . based on the factual findings that the Court has made including the fact that his jeans were found on the bed with his ID in them, that he had mail in that room, that he had other personal belongings in that room and—that he admitted to storing personal items in that room.

> Now, the family photos were not in bedroom number two, but they certain[ly] indicate, at the very least, that [appellant] resided there or again at the very least spent a substantial amount of time at 1147."

The court found appellant guilty of the gun possession charges.

The remaining facts are relevant to whether the court failed to comply with Maryland Rule 4-215(e) for discharge of counsel. On the morning of his first day of trial, November 7, 2018, appellant told the court that he was dissatisfied with his counsel for failing repeatedly to secure a *Franks*[4] hearing for him.

The first in the series of incidents concerning a *Franks* hearing request occurred at a motions hearing on July 31, 2018 before Judge Richard R. Titus. Judge Titus began the hearing by noting that there was "a miscommunication between [defense counsel] and the State, as far as what exactly the issues were going to be before the Court today." The court also indicated that it was aware that appellant was concerned about his counsel and was considering discharging him. The court asked defense counsel to "clearly delineate exactly what issues the Defense intend[ed] to raise, as far as motions to suppress . . . ."

After consulting with appellant, defense counsel stated that appellant wanted to

[4] A *Franks* hearing, named after *Franks v. Delaware*, 438 U.S. 154 (1978), is an evidentiary hearing, held after a defendant makes an adequate preliminary showing that challenges the validity of a search warrant by attacking the veracity of statements made in the supporting affidavit. *Fitzgerald v. State*, 153 Md. App. 601, 643–44 (2003), *aff'd*, 384 Md. 484 (2004). A substantial preliminary showing of knowing or reckless falsity is a "*precondition*[] that must be satisfied before a defendant is even entitled to a hearing." *Id.* at 644. Courts have "stressed that a *Franks* hearing is a rare and extraordinary exception (1) that must be expressly requested and (2) that will not be indulged unless rigorous threshold requirements have been satisfied." *Id.* at 642.

contest, among other things, "the attestation and affirmation on the warrant that was authored by Detective [Doug] Reese on the 5th of December . . . that resulted in the search of the premises at 1147 Western Chapel Road . . . ." Defense counsel asserted that, unlike other warrant requests involved in the case, the December 5, 2017 warrant did not "represent that other officers' input was involved in the authoring of that search warrant."

The court then asked whether appellant was raising a *Franks* issue, as opposed to challenging the "technical sufficiency of the warrant," to which defense counsel replied as follows:

> "[DEFENSE COUNSEL]: Well, in referring to [appellant's] interpretation, the contents of the warrant, I am not sure there is any suggestion of fraud in that. . . . It is in fact that *the affirmation is that Detective Reese had personal knowledge and suggests that he . . . himself knew of all of the facts contained within the search warrant application.*
>
> So I think the Court's characterization is accurate, but I want to just repeat it in my own words I guess to make sure the Court, the State and the Defense were all on the same page. Is that essentially what we are arguing?
>
> [APPELLANT]: Yes.
>
> [DEFENSE COUNSEL]: All right.
>
> THE COURT: Again, just so I am clear, *what you are suggesting then is that the attestation clause under warrant is . . . personal knowledge where in fact . . . the officer who completed the warrant attestation was relying on information obtained from others.* Is that fair to say?
>
> [DEFENSE COUNSEL]: Yes. Because by all [ac]counts that officer did not arrive until after that warrant was issued.
>
> THE COURT: All right. Well, just out of an abundance of

> caution, *I think that is something that is more raising a* Franks *issue because it is suggesting somehow there is an intentional misstatement by the officer when he completed the attestation clause.* So as far as the burdens of proof, from what I am hearing it sounds like that is more of a *Franks* challenge to the basis for the warrant itself having been issued."

Because a necessary witness for a *Franks* hearing was not present in court that day, the court postponed the hearing until August 13, 2018. Next, the court addressed appellant's concern about his counsel and asked whether appellant wanted his counsel to continue representing him or whether he wanted to represent himself. Appellant consulted with his counsel off the record, and counsel then stated: "[Appellant] . . . has indicated to me that he is comfortable with my representing him."

At the August 13, 2018 motions hearing before Judge J. Barry Hughes, the State explained to the court that, although Judge Titus had characterized appellant's request as a request for a *Franks* hearing, appellant had not established his right to the hearing with the requisite "substantial preliminary showing." When asked by the court whether Detective Reese, in preparing the affidavit in support of the search warrant, did not identify certain information as coming from other police sources, the State responded that Detective Reese "continually says detectives made contact, contact was made. He never says I spoke to these people, I was on scene. It is never misrepresented in that type of a way. This is a matter of semantics that the Defense has brought up." The State argued that there was no intentional falsehood or misrepresentation as required by *Franks*.

The court subsequently asked defense counsel if he "complied with the requirements of notice, affidavits, *et cetera*, that is required by the case law" for the court to hold a

Franks hearing. Defense counsel conceded that he did not have the affidavit nor submit his argument in a written motion because he believed that he had already secured a *Franks* hearing. The court asked, "So, the mere fact that Judge Titus called [appellant's argument] a *Franks* issue you think meets your burden?" Defense counsel responded as follows: "I didn't call it a *Franks* issue. The Court, after listening to my proffer, characterized it as such, and it was my belief at the time that he accepted it as such."

The court ultimately denied appellant's motion for a *Franks* hearing on both procedural and substantive grounds, ruling as follows:

> "I find that the Defense has failed, first of all, to give notice of the substantial basis upon which it would contend that it is entitled to a *Franks* hearing.
>
> But even if the Court were to look beyond that and look to . . . what has been described in the warrant itself, I would not find that that recitation would meet the substantial preliminary burden that is imposed upon [appellant] at this stage of the proceedings. So I am going to deny [appellant's] request on that issue."

On October 22, 2018, defense counsel filed a motion for a *Franks* hearing, and the State filed a response and an objection. On November 7, 2018, the morning of the first day of trial, Judge Fred S. Hecker presiding, the court addressed appellant's motion. The State argued (1) that Judge Hughes had heard and denied the motion for a *Franks* hearing and (2) that appellant still did not meet his preliminary burden to obtain a *Franks* hearing. Defense counsel summarized his account of the previous interactions with the court on the *Franks* issue as follows:

> "Your Honor, what had happened was actually a series of

> errors that were trivial to me, not to [appellant]. But when we came in for [the August 13, 2018] motions hearing, I was under the impression initially that we were going to waive that motions hearing. I was corrected as to that. So there had not been a filing in support of a *Franks* hearing . . . at that point in time. And what Judge Hughes said is that at this stage, he denies [appellant's] request.
>
> He did not rule on it absolutely . . . .
>
> So that is why it is filed in the matter that it is."

Defense counsel explained his grounds for the *Franks* hearing as follows: "And the showing, it is reckless disregard for the truth, not suggesting that Detective Reese is lying but there are significant assertions in that . . . affidavit for the search warrant that just aren't supported by anything the State has provided[.]"

The court informed defense counsel that his motion did not include exhibits, such as a copy of the challenged search warrant, the warrant application, or relevant transcripts from the July 31, 2018 hearing. Defense counsel replied that he believed that he had included the search warrant and application for it, but that he had filed them from out of town and had difficulty with the scanner that he used. As for the transcripts, he admitted that he did not include them with his motion but noted that most of the witnesses who testified at the July 31, 2018 hearing were present in court currently and were likely willing to testify consistently.

After hearing from the parties, the court determined that, despite the missing exhibits, it would review appellant's *Franks* motion on substantive grounds, and it denied the motion, explaining as follows:

"The Court has reviewed . . . the respondent's motion requesting a grant of a *Franks* hearing and the State's opposition thereto. I have done that as I indicated in the absence of the actual application or warrant at issue or the absence . . . of the transcript of certain portions of the testimony cited in the motion which is alleged to be at variance with information provided by the affiant in the application . . . .

The Court is governed . . . by . . . uncontroverted law in this area and that is that ordinarily the Court is confined to reviewing the four corners of an affidavit and that search warrants are presumptively valid. Where however the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally or with reckless disregard for the truth was included by the affiant in the warrant affidavit and if the allegedly false statement is necessary to the finding of probable cause, then the Fourth Amendment requires a hearing to be held and the defendant bears the burden of presenting or making this preliminary substantial showing by a preponderance of the evidence.

I do not find based on my review of the motion requesting a *Franks* hearing that the defendant has m[et] his burden of making a substantial preliminary showing that the affiant made either a false statement knowingly and intentionally or with reckless disregard for the truth or that the information assuming that it was false or made with reckless disregard was material.

That is to say that but for this information being included in the application, the warrant would not have issued. So I . . . find that the defendant has not met his burden in this case of demonstrating the need for a Franks *hearing or that a* Franks *hearing should be held. So I am going to respectfully deny the motion for a* Franks *hearing. And I would say also that without having reviewed a transcript of the proceedings before Judge Hughes . . . I do have some concerns that this issue had already been raised before the Court or . . . the Court had previously denied the defendant's request.*

And so on that basis I would be inclined to reject the request. *But on a more substantive level the Court denies the request*

for the reasons stated."

As the court proceeded with the next matter, appellant informed the court that he was "not feeling very confident" about his attorney, explaining as follows: "what I experienced this morning with his lack of documentation, lack of affidavit, seems to be the norm with his representation since he started representing me in early February." Appellant indicated that he was dissatisfied with his counsel's representation and asked for another attorney. The court explained that it could not compel the Office of the Public Defender to appoint him a different attorney but that the court was "interested in finding out" why he was dissatisfied with his appointed counsel. The court further explained that if appellant could provide a meritorious reason to discharge counsel, the court "would continue or postpone the case so that [he] could get another lawyer," but that if he failed to provide a meritorious reason, he would have to choose between continuing with his current counsel or representing himself.

In support of his request, appellant asserted that his lawyer: (1) "fumbled the ball" regarding his requests for a *Franks* hearing, in particular by failing to attach the needed exhibits that day; (2) did not "communicate on a regular consistent basis" and failed to respond when appellant tried to contact him; (3) had not interviewed or subpoenaed the witnesses that appellant requested that he interview; and (4) had not provided appellant with a "legal strategy" other than to "nitpick" the State's witnesses.

The court inquired into appellant's second reason as follows:

> "THE COURT: Approximately how many times has [defense counsel] met with you?

[APPELLANT]: Yesterday, last Thursday. The day before court which was a Sunday, August 12th I believe. And one time prior to that.

***

And like I said, the lack of communication. Not returning my phone messages or responding to my letters.

THE COURT: How many letters have you written him?

[APPELLANT]: Three.

THE COURT: Okay. And he didn't respond to any of them?

[APPELLANT]: No, he did not.

THE COURT: And how many times have you called him if you know?

[APPELLANT]: Probably between a half dozen and dozen times."

The court inquired into appellant's third reason as follows:

"THE COURT: Did you without telling me any details . . . discuss with [defense counsel] witnesses that you thought he should interview or subpoena to court?

[APPELLANT]: Yes, I did.

THE COURT: Has he done all of that?

[APPELLANT]: No, he hasn't.

THE COURT: . . . You gave him a list of witnesses that you wanted . . . him to interview, yes?

[APPELLANT]: Yes.

THE COURT: Okay. And did he interview all of the people that you wanted him to interview?

> [APPELLANT]: No, he didn't.
>
> THE COURT: Did he interview *any* of them that you wanted interviewed, do you know?
>
> [APPELLANT]: No, he did not.
>
> THE COURT: Okay and did you give him a list of individuals that you wanted him to subpoena to court? . . . Names of specific people?
>
> [APPELLANT]: Yes.
>
> THE COURT: Okay. Did he subpoena those people to court?
>
> [APPELLANT]: No, he did not.
>
> ***
>
> THE COURT: *[W]hat is the nature of these types of witnesses? What is it that you hope or though[t] that these individuals could do for you? Were there alibis? Are they . . . people who would say that you are a law abiding citizen?*
>
> [APPELLANT]: *They would shed light on . . . the environment between the officers of the law and myself when we interacted on these two occasions.*
>
> THE COURT: *That maybe the officers had some sort of bias against you or . . .*
>
> [APPELLANT]: *Possibly*."

As to his fourth reason, appellant stated as follows:

> "I asked him for some type of legal strategy upon a defense in this case. And that has been for nothing. You know, his defense is that he will nitpick the witnesses that the State is going to have testify. That certainly doesn't feel an advocate for my defense."

The court asked defense counsel if there was "anything that [he] would like to say

in response to what [appellant]" told the court. Defense counsel replied: "Your Honor, I am procedurally and ethically prohibited from responding." The court moved on, responding "Okay. I wanted to give you the opportunity."

The court concluded that appellant did not have a meritorious reason to discharge counsel and declined to postpone the case. The court explained that in its experience, it is "not all that unusual that when the case ultimately comes to trial and a resolution therefore has not been reached individuals sometimes start to ask questions about . . . the ability of their attorneys to adequately represent them" because "they really haven't seen [their attorneys] in trial[;] they have seen them in court a couple of times . . . [for] preliminary issues." Next, the court explained to appellant that "pok[ing] holes in the State's case" is "perhaps the most common strategy" and that defense counsel was an experienced advocate who had "always been prepared to try the case and prepared during the trial." The court did not explicitly address appellant's concern about his counsel's lack of regular communication or failure to interview or subpoena witnesses. The court gave appellant the choice to keep his counsel or proceed unrepresented; appellant decided to proceed with counsel.

In response to the court's remark that appellant brought up his request to discharge counsel for the first time in the morning of trial, appellant explained that defense counsel's failure to attach the needed exhibits for the *Franks* hearing that day was the final straw, stating as follows:

> "[G]iving [defense counsel] the benefit of the doubt, that is what I have done up until today. Then to see and experience

> him representing my legal best interest and him not having the application for the search warrant and him not having . . . the transcripts from Judge Hughes discussing this matter . . . is something that just happened today.
>
> You know, I gave him the benefit of the doubt that he had everything lined up and he did not. You know that is something that you and I experienced at the same time together. . . . That just pushed me over the edge. He is not doing his job . . . So how can I bring it to someone's attention when I just like you . . . experienced it today? I gave him the benefit of the doubt until today.
>
> And then now that I am in here, I see him—I experience him—the ball. This is my life . . . at play here."

The court found appellant guilty and imposed sentence as noted, and this timely appeal followed.

II.

Before this Court, appellant argues that the trial court conducted an inadequate inquiry under Rule 4-215(e). According to appellant, the court's inquiry into appellant's reasons for wanting to discharge his attorney was inadequate because it was done "in a vacuum"—the court (1) did not inquire into the various objective facts that formed the basis of appellant's desire to discharge counsel and (2) accepted at face value defense counsel's assertion that he was "procedurally and ethically barred" from responding.

Assuming, *arguendo*, that the court's inquiry was adequate, appellant argues that the court abused its discretion in finding appellant's reasons unmeritorious. Appellant argues that his request was not an eleventh-hour idea or an effort to delay trial but rather

the result of his cumulative dissatisfaction with defense counsel; his counsel's failure to prepare for a *Franks* hearing on the first day of the trial was, to appellant, the final straw. Appellant also argues that even before the "*Franks* debacle," counsel had failed to communicate regularly with him, interview and subpoena eyewitnesses whose names appellant had provided, and develop a defense strategy other than "poking holes in the State's case."

Appellant also argues that the evidence was insufficient to support his conviction beyond a reasonable doubt for possession of a regulated firearm by a disqualified person, which requires a finding that appellant exercised "some dominion or control over the prohibited [item]." Appellant claims that he did not live in the residence where the shotgun was found and that the gun belonged to Mr. Mackie-Harvey.

The State argues that the court conducted the necessary inquiry under Rule 4-215(e). The State contends that the court permitted appellant to explain fully why he wished to discharge his counsel and that it was within the court's discretion to find appellant's reasons unmeritorious.

Additionally, the State argues that the evidence was sufficient to support appellant's convictions for possession of a shotgun after having been convicted of a crime of violence[5] and possession of a shotgun after having been convicted of a disqualifying crime. The

[5] The State in its brief notes that appellant fails to mention this other conviction, which incidentally has a significantly higher maximum penalty, when challenging the sufficiency of the evidence for his conviction for possession of a shotgun after having been convicted of a disqualifying crime. The State views appellant's argument challenging his possession of the shotgun—an element of both offenses—as an attack on both convictions.

State argues that there was sufficient evidence presented at trial to permit a reasonable factfinder to find that appellant lived in the residence and room where the gun was found and hence that he had "dominion and control" over the gun.

III.

We begin with the question of whether the trial court complied with the requirements of Rule 4-215(e) and, if so, whether the court abused its discretion in finding that appellant's reasons to discharge counsel lacked merit.

We review *de novo* whether the court complied with Rule 4-215(e). *Gutloff v. State*, 207 Md. App. 176, 180 (2012). So long as the court has complied with Rule 4-215(e), we review for abuse of discretion the court's determination under the Rule that a defendant had no meritorious reason to discharge counsel. *State v. Taylor*, 431 Md. 615, 630 (2013). Abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 135 S. Ct. 284 (2014); *see also Evans v. State*, 396 Md. 256, 277 (2006) (holding that to constitute an abuse of discretion, a trial court's decision "has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable" (internal citation and quotation omitted)).

Rule 4–215 (e) states as follows:

> "**Discharge of Counsel — Waiver.** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court *shall permit* the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a) (1)–(4) of this Rule if the docket or file does not reflect prior compliance."

(Emphasis added).

The Court of Appeals has laid out three steps for a trial court to follow to comply with Rule 4-215(e) as follows:

> "*(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 omitted).

We hold that the trial court followed properly the three-step process articulated by the Court of Appeals and hence complied with Rule 4-215(e). The court asked appellant his reasons for wanting to discharge counsel and sought clarification to evaluate these reasons. Appellant provided four reasons: that his attorney (1) "fumbled the ball" regarding his request for a *Franks* hearing, in particular by failing to attach the needed exhibits on the day of the trial; (2) did not "communicate on a regular consistent basis" and failed to respond when appellant tried to contact him; (3) had not interviewed or subpoenaed the witnesses that appellant requested; and (4) had not provided appellant with a "legal strategy" other than to "nitpick" the State's witnesses. As to appellant's first reason, the court was familiar with defense counsel's conduct because it had considered and declined appellant's request for a *Franks* hearing on substantive grounds. As to appellant's second and third reasons, the court asked for further details, and appellant provided them. As to appellant's fourth reason, the court did not need to ask for further details, as it later explained that "nitpicking" the State's witnesses is a valid and common defense strategy.

We hold that the court did not abuse its discretion in finding that appellant's reasons lacked merit. Rule 4-215(e) does not define "meritorious"—evaluating a defendant's reasons under Rule 4-215(e) is navigating an "ugly patch of difficult terrain." *Garner v.*

State, 183 Md. App. 122, 127 (2008). In determining "meritorious," "a trial court may choose to credit or discredit the arguments presented, and after doing so, must use its own judgment in making a ruling." *Cousins v. State*, 231 Md. App. 417, 444 (2017).

The court did not abuse its discretion in finding unmeritorious appellant's dissatisfaction with his counsel for counsel's technical failure to attach exhibits to the *Franks* motion (and for other mistakes that defense counsel may have made in the prior appearances related to the *Franks* hearing). The court considered the merits of the motion and denied it on substantive grounds, which means that any error that defense counsel made did not harm appellant's case.

As to appellant's second reason, we have noted previously that *a complete breakdown* in communication is considered a meritorious reason to discharge counsel. *Weathers v. State*, 231 Md. App. 112, 140 (2016) (Graeff, J., concurring) (citing *McKee v. Harris*, 649 F.2d 927, 931 (2d Cir. 1981)). Such breakdown in communication occurs, for example, when "appellant and his or her 'counsel experienced a total lack of communication preventing an adequate defense.'" *Id*. (quoting *United States v. Reevey*, 364 F.3d 151, 156 (4th Cir. 2004).[6] In the case at bar, appellant's explanation to the court indicated that he met with his counsel enough to receive adequate representation, and the

[6] Other factors that courts consider include: (1) the timeliness of the request, (2) the adequacy of the court's inquiry into appellant's complaint about counsel, and (3) whether the defendant substantially and unreasonably contributed to the communication breakdown. *Weathers*, 231 Md. App. at 140 (quoting *Reevey*, 364 F.3d at 156; *United States v. Lott*, 310 F.3d 1231, 1250 (10th Cir. 2002)).

court was within its discretion to find that relatively infrequent communication does not rise to the level of a "complete breakdown" that warrants discharge of counsel.

As to appellant's third reason, the court inquired into what appellant believed the witnesses that appellant wanted to call would say to aid his defense. The court presumably determined that appellant's intended use of these witnesses—to show that police were biased against appellant—was not material to his defense and that counsel's failure to interview or subpoena these witnesses did not harm appellant and did not constitute a meritorious reason to discharge counsel. The court did not abuse its discretion in so determining.

Lastly, as to appellant's complaint that his counsel had not provided him with a legal strategy other than to "nitpick" the State's witnesses, the court's finding accords with case law holding that a disagreement regarding legal strategy is not a meritorious reason to discharge counsel. *See Bey v. State*, 228 Md. App. 521, 534 (2016) (holding that court did not abuse discretion in denying implied request to discharge counsel based on disagreement about whether to cross-examine victim); *see also United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002) ("Good cause for substitution of counsel consists of more than a mere strategic disagreement between a defendant and his attorney"); *United States v. Gibbs*, 190 F.3d 188, 207 n.10 (3d Cir. 1999) ("[D]isagreement over legal strategy does not constitute good cause for substitution of counsel"). The court did not abuse its discretion.

We turn to appellant's challenge to the sufficiency of the evidence. Appellant waived a jury trial and proceeded to trial before the court. Rule 8-131(c) governs the standard of review after a bench trial as follows:

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

When reviewing the sufficiency of the evidence to sustain a conviction following a bench trial, we do not undertake a review of the record that would amount to a retrial of the case; rather, we review evidence in light most favorable to the State, "giving due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess credibility of witnesses." *State v. Albrecht*, 336 Md. 475, 478 (1994). We determine only whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 479 (quoting *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)).

To support a conviction for a possessory offense, the "evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the [contraband] in the sense contemplated by the statute, *i.e.*, that [he] exercised some restraining or directing influence over it." *Larocca v. State*, 164 Md. App. 460, 472 (2005) (quoting *State v. Leach*, 296 Md. 591, 596 (1983)). Although knowledge of the existence of the item is required "because an individual ordinarily would not be deemed to exercise dominion or control over an object about which he is unaware," *Smith*

v. State, 415 Md. 174, 187 (2010) (internal citation and quotation omitted), this "knowledge 'may be proven by circumstantial evidence and by inferences drawn therefrom.'" *Handy v. State*, 175 Md. App. 538, 563 (2007) (quoting *Dawkins v. State*, 313 Md. 638, 651 (1988)).

The Court of Appeals has identified several factors to consider in determining whether a defendant has knowledge and constructive control or dominion over items, explaining as follows:

> "[1] [T]he defendant's proximity to the [items], [2] whether the [items] were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the [items], and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the [items]."

State v. Gutierrez, 446 Md. 221, 234 (quoting *Smith*, 415 Md. at 198); *see also Folk v. State*, 11 Md. App. 508, 518 (1971). No one factor is dispositive; "possession is determined by examining the facts and circumstances of each case." *Smith*, 415 Md. at 198.

In the case at bar, there was sufficient evidence for the trial court to find beyond a reasonable doubt that appellant had constructive possession of the shotgun found in Bedroom 2 of 1147, based on sufficient evidence that (1) appellant lived at 1147, (2) appellant lived in Bedroom 2 of 1147, and (3) Mr. Mackie-Harvey lived in the other bedroom. First, there was sufficient evidence that appellant lived at 1147: he was present at 1147 on the three occasions that police visited and was observed there on at least three other occasions in between those dates; there was a photo collage of appellant's family in

the living room; police testified that appellant provided 1147 as his address when he was booked on December 5, 2017; and a number of appellant's friends or acquaintances were living at 1147, from which the court inferred that they were living there because "he let them live there" with him.

Second, there was sufficient evidence that appellant lived in Bedroom 2 of 1147: police discovered in that room mail and a diploma all bearing appellant's name; appellant admitted that he used Bedroom 2 to store his personal property (this by itself implying that he had "dominion and control" over the room and its contents); and on December 5, 2017, during the investigation of the stabbing of Mr. Mackie-Harvey at 1147, police found a pair of pants on the bed in Bedroom 2 that contained a wallet with appellant's valid identification card.

Third, there was sufficient evidence that Mr. Mackie-Harvey lived in Bedroom 1—implying that he did not have "dominion and control" over Bedroom 2—such as the blood trail from Mr. Mackie-Harvey's December 5 stabbing injuries leading to Bedroom 1 and the police's discovery of Mr. Mackie-Harvey's identification card in Bedroom 1.

We hold that there was sufficient evidence for the trial court to find beyond a reasonable doubt that appellant had constructive possession of the shotgun and that appellant was guilty of the gun possession charges.

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