Circuit Court for Baltimore City
Case No. 116222023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 520

September Term, 2018

CARRINGTON STURGIS

v.

STATE OF MARYLAND

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

JJ.

Opinion by Raker, J.

Filed: December 9, 2019

*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.

Appendix A

Appellant Carrington Sturgis was convicted by a jury in the Circuit Court for Baltimore City of first-degree murder, use of a firearm in the commission of a crime of violence, possession of an illegal firearm, and conspiracy to wear and carry a handgun in the open.[1] Appellant presents six questions for our review, which we have rephrased as follows:

1. Did the court abuse its discretion in refusing to ask *voir dire* questions about whether members of the venire were biased against appellant out of frustration for having to return for a second day of jury selection and whether members of the venire were afraid to answer questions in appellant's presence?

2. Did the court err in admitting testimony that a police officer knew appellant and that one of the witnesses knew appellant from selling drugs because such testimonies were inadmissible "prior bad acts" evidence?

3. Did the court err in allowing a witness to testify as to appellant's middle name because the purported basis for that witness's knowledge was appellant's driver's license that the court excluded from evidence?

4. Was the evidence legally sufficient to sustain appellant's convictions?

5. Did the court abuse its discretion in failing to address appellant's request to discharge counsel?

6. Did the court deny appellant's right to be present at trial proceedings and his right to counsel of choice by granting counsel's motion to withdraw without holding a hearing?

We shall affirm on all counts.

[1] Appellant was convicted in a joint trial with co-defendant Frank Barnett whose separate appeal was also before this Court. *See Barnett v. State*, No. 499, Sept. Term 2018.

I.

Appellant was indicted by the Grand Jury for Baltimore City on charges of first-degree murder; use of a firearm in the commission of a crime of violence; wear, carry, and transport of a handgun; possession of an illegal firearm; conspiracy to wear, carry, and transport a handgun in the open; conspiracy to commit murder; and conspiracy to use a firearm in the commission of a crime of violence. Following an eight-day trial, the jury convicted appellant of of first-degree murder; use of a firearm in the commission of a crime of violence; possession of an illegal firearm; wear, carry, and transport of a handgun; and conspiracy to wear and carry a handgun in the open. For sentencing purposes, the court merged appellant's conviction for wear, carry, and transport of a handgun into the conviction for use of a firearm in the commission of a crime of violence. The court sentenced appellant to a term of incarceration of life imprisonment for first-degree murder; twenty years (first five years without parole) for use of a firearm in the commission of a crime of violence; ten years (first five years without parole) for possession of an illegal firearm; and three years for conspiracy to wear, carry, and transport a handgun in the open; all consecutive to the life sentence.

The following facts were presented at trial. Late at night on July 9 or early in the morning of July 10, 2016, William Johnson was shot and killed at the home of Charlene Davis. Mr. Johnson, Ms. Davis, and three other individuals were at the house using drugs. Two men entered Ms. Davis's house and argued with and physically assaulted Mr. Johnson, and then one of the men fatally shot him.

Appellant first engaged counsel from the Office of the Public Defender to represent him and subsequently retained private counsel. On November 18, 2016, private counsel entered her appearance on appellant's behalf. On May 11, 2017, private counsel sent a letter to appellant's last known address notifying him of her intent to withdraw from representation. On June 1, 2017, private counsel filed a motion in the Circuit Court to strike her appearance, indicating to the court that she wished to withdraw because appellant had "not complied with the terms of the agreement for counsel to represent him and . . . ha[d] been confrontational with counsel on various occasions." Appellant sent a letter to the court and the State on June 15, 2017 indicating that he was proceeding *pro se*.[2] The State received the letter on June 28, 2017 and forwarded it to appellant's private counsel. The court struck private counsel's appearance by an order signed on July 7, 2017.[3] Three weeks later, at a hearing on July 28, 2017, the assistant public defender whom appellant initially engaged entered his appearance on behalf of appellant. During this hearing, appellant claimed that he was unaware that his private attorney had withdrawn. The public defender represented appellant at trial.

During jury selection, a water main break forced the court to adjourn early and resume the following day. This led some jurors to express frustration with having to return for a second day. On the following day, defense counsel requested that the court ask a *voir*

[2] In the letter, appellant asked for a written transcript of witness statements because he could not listen to them and stated that he had "no proper representation to assist" him.

[3] The record is unclear as to whether the trial judge that signed the Order granting private counsel's motion to withdraw received appellant's letter. The July 28, 2017 hearing occurred in front of a different judge, who had a copy of the letter.

dire question about whether the events of the previous day had biased members of the jury pool towards appellant. The court, citing its prior similar experiences, refused to ask the question, reasoning that doing so could create bias where none existed. Separately, two female members of the jury pool expressed to the court apprehension about answering questions in appellant's presence. The court *voir dired* one of the jurors who expressed this concern but refused to ask the entire venire if it shared the same concern because, as with the question about events of the previous day, the court believed that doing so might create bias where none existed.

At trial, Ms. Davis and the other eyewitnesses to Mr. Johnson's murder provided detailed accounts of the incident. The witnesses all admitted to using drugs habitually and on the night in question. Ms. Davis was the only eyewitness who testified that she knew appellant and his co-defendant. On cross-examination of Ms. Davis by counsel for appellant's co-defendant, Ms. Davis testified that she knew appellant "from drug transactions on the street and through people that I know." Defense counsel for appellant objected to this statement, and the court overruled the objection.

During direct examination of Detective Andre Parker, whom Ms. Davis approached on the street on the morning after the shooting, the State asked Detective Parker whether he knew appellant. Detective Parker testified that when Ms. Davis told him about the incident and mentioned appellant's name, he knew about whom she was talking. When the State asked Detective Parker if that person was in the courtroom, counsel for appellant's co-defendant objected, and the court overruled the objection.

During direct examination of Detective Brian Lewis, the primary detective on the case, the State tried to lay the evidentiary foundation to admit into evidence a copy of appellant's driver's license. The State asked Detective Lewis if he had reviewed appellant's driver's license, and he testified that he had. The State then showed Detective Lewis a copy of the license and asked him if he recognized it. Appellant's counsel and counsel for appellant's co-defendant objected on the grounds that the license was hearsay, and the court sustained the objection as follows:

> "[THE STATE]: Detective Lewis . . . [c]ould you take a look at this and let me know if you recognize it, first of all?
>
> [DETECTIVE LEWIS]: Sure. Yes.
>
> [THE STATE]: And what do you recognize it to be?
>
> [DETECTIVE LEWIS]: A Maryland—
>
> [CO-DEFENDANT'S COUNSEL]: Objection, can we approach?
>
> ***
>
> [CO-DEFENDANT'S COUNSEL]: I think the bulk of it's hearsay.
>
> ***
>
> THE COURT: [Appellant's counsel] just joined . . . .
>
> ***
>
> [THE STATE]: This is a physical object—
>
> THE COURT: Yes.

[THE STATE]: . . . that Detective Lewis personally examined and recovered. It is also a public record of information maintained by the Motor Vehicle Administration—

THE COURT: Relevance?

[THE STATE]: It's both relevance to [appellant's] . . . appearance as well as information about his height and his name.

***

THE COURT: [Appellant] just . . . accurately testified, in fact, to the height and his name.

[THE STATE]: That's true, Your Honor, but this . . . corroborates that testimony.

THE COURT: Okay. The objection is sustained. Thank you."

The State then asked Detective Lewis to state appellant's full name. Defense counsel objected on the grounds that Detective Lewis's basis of knowledge was appellant's driver's license that the court had not admitted into evidence; the court overruled the objection as follows:

"THE COURT: . . . I'm going to guess that he's going to say the basis of knowledge is the driver's license.

***

[THE STATE]: I'm sure there's many bases.

THE COURT: Yes.

Thank you. The objection is overruled. He may answer the question."

Detective Lewis then stated appellant's full name.[4]

After his conviction, appellant filed a motion for new trial. Appellant argued that there was insufficient evidence to support his convictions and that he was denied his constitutional right to counsel of his choice when the court struck his private attorney's appearance without holding a hearing. At appellant's sentencing hearing on April 9, 2018, appellant presented along with the motion for new trial a letter dated January 31, 2018 from the Office of the Public Defender indicating that they had forwarded a request from appellant for a panel attorney to his former private counsel and identifying her erroneously as appellant's trial attorney.[5] Defense counsel argued that the letter showed that appellant wanted his former private counsel to represent him and that the court order striking her appearance before trial therefore denied appellant's right to counsel of his choice.[6] The court denied the motion for new trial.

The court imposed sentence as stated above, and this timely appeal followed.

[4] Detective Lewis testified incorrectly that appellant's middle name is "James," but it is actually "Joshua."

[5] Because appellant's private counsel accepts panel cases from the Office of the Public Defender, the Office might have believed mistakenly that she still represented appellant.

[6] During this part of the hearing, the court stated erroneously that the letter was sent before trial. The letter was sent during trial, which occurred on the following dates: January 22, 23, 25, 26, 29, 30, and 31 and February 1, 2018.

II.

Before this Court, appellant presents six questions for our review. He first argues that the trial court erred by refusing to ask his purported *voir dire* questions about whether events on the first day of jury selection had biased members of the jury pool against him and whether members of the jury pool were afraid to answer questions in appellant's presence. In his view, the question regarding events of the previous day was necessary to determine if members of the venire could not serve impartially because they would direct their frustration with having to return to court for a second day at appellant. He contends similarly that a *voir dire* question asking members of the venire if they were nervous about answering questions in front of appellant was necessary to eliminate potential bias.

Second, appellant argues that the testimony of Ms. Davis and Detective Parker as to how they knew appellant amounted to inadmissible "prior bad acts" evidence. In appellant's view, the testimony of both witnesses was used to establish his propensity to act in accordance with his prior behavior, which he argues is prohibited by Maryland Rule 5-404(b).

Third, appellant contends that the court erred by allowing Detective Lewis to testify as to appellant's middle name because his basis of knowledge was appellant's driver's license, which the court had excluded from evidence. Appellant argues that the court excluded the driver's license because it was inadmissible hearsay and rejected properly the State's argument that the driver's license fell within the "public records" exception to hearsay under Rule 5-803(b)(8). Appellant maintains, however, that the court abused its discretion by allowing Detective Lewis to testify based on this excluded evidence.

Fourth, appellant argues that the evidence against him was insufficient to sustain the jury's verdict. Appellant contends that Ms. Davis, who was the State's crucial witness because she allegedly knew appellant and his co-defendant before the murder, was not credible because of her past substance abuse, including on the night of the incident. He also argues that Ms. Davis had a motive to kill Mr. Johnson. Regarding the other witnesses, he argues that they also lacked credibility because of their histories of substance abuse. Consequently, in appellant's opinion, the eyewitness testimony was too incredible to establish his guilt beyond a reasonable doubt.

Fifth, appellant argues that the court addressed improperly his request for new counsel to represent him at sentencing. Appellant contends that both the January 31, 2018 letter from the Office of the Public Defender and the February 9, 2018 motion for new trial "sufficed to trigger the court's duty" to inquire into appellant's reasons for wishing to obtain new counsel. The court therefore abused its discretion, he argues, by disregarding the letter and denying the motion without making an inquiry.

Finally, appellant argues that the court's decision to grant his private attorney's motion to strike her appearance without a hearing violated his Sixth Amendment right to be present at trial and to counsel of his choice. In appellant's view, Maryland Rule 4-214(d), which allows defense counsel to withdraw appearance in writing if written notice is provided to the defendant, cannot be read to allow a court to strike an attorney's appearance without a hearing. He contends that the constitutional right of a defendant to be present at trial guaranteed by Rule 4-231 required the court to hold a hearing before granting the motion.

In response, the State first contends that appellant's objection to the court's failure to ask his proffered *voir dire* questions is not preserved for our review. The State argues that appellant's initial objection was related to an issue central to the composition of the jury because appellant's proffered questions related to biases that might have emerged during jury selection. By failing to renew the objection once the jury was empaneled, the State concludes, appellant waived his right to appeal the issue. Even if the objection was preserved, the State argues, the court did not abuse its discretion because it determined properly that the questions might have created rather than cured bias in the jury pool.

Second, the State argues that the testimony of Ms. Davis and Detective Parker as to how they knew appellant was admissible for the purpose of identifying him, which is a permissible use of prior acts evidence under Rule 5-404(b). The State argues that appellant's objection to Detective Parker's testimony was not preserved for appeal because only counsel for his co-defendant raised the objection. If, however, the objection was preserved, the State contends that Detective Parker and Ms. Davis merely provided evidence probative of their relationship with appellant. In the State's view, even if this evidence was admitted improperly, appellant was not unfairly prejudiced because the information conveyed—that appellant was involved in drug transactions and known to police—did not paint appellant in a more unfavorable light compared to his co-defendant and the eyewitnesses, who all admitted to similar conduct. Therefore, the State argues, any error was harmless beyond a reasonable doubt.

Third, the State argues that the court properly allowed Detective Lewis to testify as to appellant's full name. In the State's view, the court excluded the driver's license not

because it was hearsay but because it was cumulative. The driver's license was not hearsay, the State argues, because a driver's license given by a defendant to a police officer is an implied assertion by the defendant of the information on the license. Moreover, the State maintains that a person's name is not hearsay. Therefore, in the State's view, the court did not err in allowing Detective Lewis to testify as to appellant's middle name because neither his basis of knowledge nor his testimony itself was hearsay.

Fourth, the State argues that there was sufficient evidence to convict appellant. The State contends (1) that a single witness's testimony is legally sufficient and (2) that it is the role of the jury to weigh a witness's credibility. The State also argues that other witnesses corroborated Ms. Davis's testimony. Therefore, the State concludes, the evidence was sufficient.

Fifth, the State argues that the court did not abuse its discretion by denying appellant's motion for new trial and not granting appellant's request for new counsel. The State concedes that a court has a duty to inquire into the reasons for a defendant's desire to obtain new counsel at sentencing. The State argues, however, that the motion for new trial and the January 31, 2018 letter did not express appellant's *present* dissatisfaction with counsel and thus did not trigger the required inquiry. Instead, the State argues, these documents expressed appellant's *retrospective* discontent with having to engage his first attorney, whom he replaced with private counsel until she withdrew her representation, before trial began. Even if the circumstances were sufficient to trigger the court's inquiry, the State argues that the court gave appellant an opportunity to be heard regarding his reasons for seeking a new trial and new representation before sentencing. The State

concludes that the court exercised its discretion properly in assessing and rejecting the motion for new trial and appellant's supposed dissatisfaction with counsel.

Finally, the State contends that appellant was not denied his right to counsel of his choice and to due process. The State argues that appellant had no right to be represented by privately retained counsel who no longer wished to represent him. The State also argues that Rule 4-214(d) does not conflict with the right of a defendant to be present at trial in Rule 4-231. The State contends that, if Rule 4-214(d) required a hearing *before* ruling on a motion to strike appearance, it would render superfluous the requirement that the court hold a Rule 4-215 hearing *after* a motion to strike appearance is granted because both matters could be handled in a single hearing. Therefore, the State argues, the court did not err in granting the motion to strike the appearance of appellant's private counsel without a hearing.

III.

We begin by addressing appellant's issue of the proposed *voir dire* questions and hold that the court did not err by refusing to ask the *voir dire* questions proffered by appellant. We first determine if this issue is preserved on appeal. An objection to a court's refusal to ask a *voir dire* question is preserved for appellate review even if it is not renewed after the jury is empaneled. *State v. Stringfellow*, 425 Md. 461, 469 (2012). Appellant objected to the court's failure to ask his purported *voir dire* questions. Although he did not renew his objection when jury selection ended, the issue is preserved.

We review the court's decision not to ask appellant's proffered *voir dire* questions for abuse of discretion. *Pearson v. State*, 437 Md. 350, 356 (2014). We will not disturb the decision of the court unless we find that the *voir dire* questions were "not reasonably sufficient to test the jury for bias, partiality, or prejudice." *Washington v. State*, 425 Md. 306, 314 (2012). Because Maryland employs "limited *voir dire*," a court "need not ask a *voir dire* question that is 'not directed at a specific [cause] for disqualification.'" *Pearson*, 437 Md. at 357 (alteration in original) (quoting *Washington*, 425 Md. at 315).

We hold that the court did not abuse its discretion in refusing to ask appellant's proffered *voir dire* questions about bias associated with events of the previous day and about discomfort with answering questions in appellant's presence. Regarding the question about bias associated with coming for a second day of jury selection, the court observed that it is not unusual for people to express frustration with a long jury selection process. Regarding the question about discomfort with answering questions in appellant's presence, the court expressed concern that such a question would create fear of appellant where none existed previously and would entice potential jurors to state that they had such discomfort to avoid serving on the jury. The court did not abuse its discretion in declining to ask these questions.

We next address appellant's claim that the court erred in admitting "prior bad acts" evidence. We address first appellant's argument that the testimony of Detective Parker is not preserved for appeal. An evidentiary objection is preserved ordinarily for appeal only if it is raised *by the party* appealing the objection. *Williams v. State*, 216 Md. App. 235, 254 (2014). In the case of Detective Parker's testimony, appellant's counsel did not object

to the testimony; only counsel for appellant's co-defendant objected. The issue of Detective Parker's testimony is not preserved for our review.

We review the court's decision to admit Ms. Davis's testimony for abuse of discretion. *State v. Simms*, 420 Md. 705, 725, 737 (2011). Evidence is admissible if it is relevant. Rule 5-402. Even if evidence is relevant, a court can exclude that evidence if the danger of unfair prejudice substantially outweighs its probative value. Rule 5-403. Rule 5-404(b) governs the admissibility of "prior bad acts" evidence, reading as follows:

> "Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. *Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.*"

(Emphasis added). "Prior bad acts" evidence is admissible when offered for a permissible use under Rule 5-404(b) and if the danger of unfair prejudice does not substantially outweigh its probative value.

We hold that the court did not abuse its discretion in admitting Ms. Davis's testimony about how she knew appellant. The State offered the evidence of appellant's involvement in drug transactions to establish that Ms. Davis could identify appellant. The evidence was admissible because it was offered for a permissible use under Rule 5-404(b) and highly probative of how Ms. Davis knew appellant. Although the testimony was prejudicial because it implicated appellant in prior "drug transactions," we agree with the State that it was vague enough to limit any unfair prejudice; for example, the testimony did not specify the role appellant played in these "drug transactions." The court therefore did

not abuse its discretion by admitting Ms. Davis's testimony and concluding that the danger of unfair prejudice of this testimony did not substantially outweigh its probative value.

We next address whether the court erred in allowing Detective Lewis to testify as to appellant's middle name because this testimony was inadmissible hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is not admissible unless it falls under a specified exception. Rules 5-801–5-803. A statement by the party against whom the statement is offered is an exception to the hearsay rule. Rule 5-803(a). We review *de novo* a court's decision to exclude evidence as hearsay or admit it under a hearsay exception. *Gordon v. State*, 431 Md. 527, 538 (2013). We review for clear error the factual findings underpinning the court's legal conclusion. *Id.*

A person's name is not hearsay. *Webster v. State*, 221 Md. App. 100, 117–18 (2015). Moreover, information on a defendant's driver's license is admissible if the trial court finds that there is sufficient evidence for the jury to "reasonably conclude that the defendant unambiguously adopted" as an admission the information on the license. *Gordon*, 431 Md. at 547 (quoting *Blackson v. United States*, 979 A.2d 1, 8 (D.C. 2009)). In *Gordon*, 431 Md. at 530, a detective testified that he had "personal knowledge" of the defendant's age because the defendant had shown his license at the detective's request. The Court of Appeals upheld the admissibility of this testimony because the information on the license qualified under the hearsay exception for statements of a party-opponent. The Court concluded that the defendant's act of showing the detective his license was sufficient evidence from which a jury could reasonably find that he made an adoptive admission of the information. *Id.* at 545, 548–49.

We hold that the court did not err in admitting Detective Lewis's testimony.[7] The court concluded correctly that appellant's middle name was not hearsay. Even if it was hearsay, the court had sufficient evidence to decide that the jury could conclude that appellant made an adoptive admission of the full name on his license. The evidence was offered by the State as a statement of appellant, thus placing it within the hearsay exception in Rule 5-803(a)(2). There is no evidence that appellant disputed that he showed Detective Lewis the license. Therefore, even if the testimony about appellant's name was inadmissible hearsay, the court did not err in admitting it into evidence.

We next address whether the evidence was legally sufficient to sustain appellant's convictions and hold that it was. We review the evidence in the light most favorable to the prosecution and will hold it legally sufficient if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Derr v. State*, 434 Md. 88, 129 (2013). Questionably credible evidence is not legally insufficient. *See Bailey v. State*, 16 Md. App. 83, 97–102 (1972). While the testimony of Ms. Davis and other witnesses was not highly credible given their admitted drug use on the night of the incident, the events of that night were corroborated by each eyewitness. We hold that the conviction was based on legally sufficient evidence.

We next turn to whether the court addressed improperly appellant's request for new counsel to represent him at sentencing. Both parties agree that Rule 4-215(e), which

[7] We do not resolve the disagreement between appellant and the State about whether the court excluded properly the driver's license as hearsay because it is irrelevant to this analysis.

governs a defendant's request to discharge counsel pre-trial,[8] does not apply because appellant's request was made after trial began. *See State v. Brown*, 342 Md. 404, 412, 417 (1996) (recognizing that a defendant's right to substitute counsel or proceed *pro se* "is limited after trial has begun" and that after trial has begun, Rule 4-215 is inapposite). Nonetheless, the court retains discretion to decide after trial begins whether dismissal is appropriate. *See id.* at 417–18. We review the court's decision not to dismiss counsel for abuse of discretion. *Id.* at 431.

There are no magic words that a defendant must utter to obtain the court's review of a request to dismiss counsel; the request is initiated if the court could "reasonably conclude" that the defendant wishes to obtain new counsel or proceed *pro se*. *State v. Taylor*, 431 Md. 615, 632 (2013). The Court of Appeals has suggested multiple factors to consider when deciding to grant a request to dismiss counsel: (1) the merits of the request, (2) the "quality" of current counsel's representation, (3) the potential "disruptive effect" of

[8] Rule 4-215(e) reads in part as follows:

> "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."

dismissal, (4) timing, (5) the status of the proceedings, and (6) the defendant's prior requests for new counsel. *Brown*, 342 Md. at 428. Importantly, "the longer the defendant waits to request discharge of counsel, the stronger the rationale must be to warrant counsel's dismissal." *Id.* at 429.

It is not clear that the court could have reasonably concluded that appellant wanted to obtain new counsel. Appellant makes clear in his motion for new trial that he was frustrated that his private attorney withdrew from representation *before trial* but does not express dissatisfaction with the representation he received from the Office of the Public Defender *during trial*. The January 31, 2018 letter—which mistakenly identified his private counsel as his trial attorney—might have been an expression of this frustration.

Assuming *arguendo* that appellant *did* express a desire to obtain new counsel, we hold that the court did not abuse its discretion because the court provided appellant an opportunity to express his wishes at his April 9, 2018 sentencing hearing. Appellant provided no compelling reasons to the court for waiting until his sentencing hearing to bring to the court's attention his desire to discharge his public defender or for delaying the proceedings so that he could seek new representation or proceed *pro se*. Thus, even though the court did not give specific reasons for denying the motion for new trial and not granting appellant's request for new counsel, it did not abuse its discretion in doing so.

Finally, we address appellant's argument that the court denied his right to be present at trial and to counsel of choice by granting his private attorney's motion to withdraw without a hearing. Appellant argues that his constitutional rights were violated when he was not notified of his private attorney's motion to withdraw or permitted to attend a

hearing prior to the motion being granted. Whether a defendant has a constitutional right to be present at a particular stage of his trial is a legal question that we review *de novo*. *See United States v. Gomez*, 67 F.3d 1515, 1528 (10th Cir. 1995). We review *de novo* an interpretation of the Maryland Rules. *Pinkney v. State*, 427 Md. 77, 88 (2012).

Rule 4-214(d) governs the withdrawal of the appearance of counsel and states as follows:

> "A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215."

Maryland Rule 4-231 addresses the defendant's right to be present, providing as follows:

> "(a) **When presence required.** A defendant shall be present at all times when required by the court. A corporation may be present by counsel.
>
> (b) **Right to be present—Exceptions.** A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument

> on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248."

It does not appear that Maryland courts have addressed the question of whether a defendant has the constitutional right to be present when the trial court considers and rules on defense counsel's motion to withdraw from the case. It is bedrock law that "a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is *critical* to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (emphasis added); *see United States v. Gagnon*, 470 U.S. 522, 526 (1985) (per curiam) ("[A] defendant has a due process right to be present at a proceeding 'whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge.'" (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 106 (1934))). The right to be present protects a defendant's right to confront witnesses and his rights under the Due Process Clause of the Fifth Amendment. *Gagnon*, 470 U.S. at 526.

In Maryland, a criminal defendant has both a common law and a constitutional right to be present at all critical stages of the trial. *State v. Hart*, 449 Md. 246, 264 (2016). These rights are implemented by Rule 4-231 and "vindicate[] two primary interests: enabling the defendant to assist in the presentation of a defense, and ensuring the appearance of fairness in the execution of justice." *Pinkney v. State*, 350 Md. 201, 209 (1998) (internal citations omitted).

The question we must decide is whether, in the case before us, appellant was deprived of his right to be present at a critical stage of the trial. Federal courts and our

sister state courts have considered the issue. Most of these courts have held that ordinarily a defendant does not have the constitutional right to be present when the court rules on a motion to withdraw as counsel or meets with defense counsel to discuss withdrawal. When the only issue to be determined is the withdrawal of counsel, the matter arises pre-trial, and no substantive matters are discussed or considered; the stage of the proceeding is not considered "critical." *See e.g.*, *Hale v. Gibson*, 227 F.3d 1298 (10th Cir. 2000); *Green v. Johnson*, 116 F.3d 1115 (5th Cir. 1997); *United States v. Oles*, 994 F.2d 1519 (10th Cir. 1993); *Shankles v. Director, TDCJ-ID*, 877 F. Supp. 346 (E.D. Texas 1995); *Smith v. State*, 724 So. 2d 280 (Miss. 1998). *But see Bradley v. Henry*, 510 F.3d 1093 (9th Cir. 2007); *People v. Cardenas*, 411 P.3d 956 (Colo. App. 2015).

In *Hale v. Gibson*, 227 F.3d 1298, 1311–12 (10th Cir. 2000), the United States Court of Appeals for the Tenth Circuit held that a meeting outside of the presence of the defendant between defense counsel and the court regarding defense counsel's application to withdraw did not violate the defendant's constitutional right to be present. The defendant was not "notified of or permitted to attend the hearing," but the court noted that there was no evidence that the court and defense counsel discussed "the substantive charges" against the defendant or the truth of the underlying conflict between defense counsel and the defendant. *Id.* The meeting "did not impinge on [the defendant's] opportunity to defend against the charges against him or affect the fairness of the entire trial" and therefore did not amount to a constitutional violation. *Id.* at 1312.

Similarly, in *United States v. Oles*, 994 F.2d 1519, 1525 (10th Cir. 1993), the United States Court of Appeals for the Tenth Circuit held that the defendant's absence from a

preliminary hearing where the trial court considered whether court-appointed counsel would withdraw in favor of potential retained counsel did not violate the defendant's due process rights (a) because no substantive matters relating to the charges pending against the defendant were discussed and (b) because the defendant did not establish that his presence would have contributed to the fairness of the trial.

In contrast, the United States Court of Appeals for the Ninth Circuit held in *Bradley v. Henry*, 510 F.3d 1093, 1097–98 (9th Cir. 2007) that a defendant's rights *were* violated when he was excluded from a meeting between defense counsel and the trial judge at which the judge concluded that the defendant was unable to pay defense counsel and appointed new counsel instead. The court concluded that "[d]ue process does not permit a judge to decide such a question without hearing the affected party." *Id.* at 1098.

State courts that have also considered this issue have articulated two approaches to determining when a stage of the trial is critical and the defendant's right to be present is implicated. The Mississippi Supreme Court advanced a case-by-case approach in *Smith v. State*, 724 So. 2d 280, 310–12 (Miss. 1998). In *Smith*, a capital case, the defendant was not present at a pre-trial hearing on a continuance motion at which the court allowed the defendant's appointed counsel to withdraw in place of his privately retained attorney. *Id.* at 310. The court held that the defendant's constitutional right to be present was not violated because defense counsel's motion was made well before trial and defense counsel "made no allegations against [the defendant] which [the defendant] was entitled to defend." *Id.* at 312.

In contrast, the Colorado Court of Appeals held that a defendant's presence at a hearing on defense counsel's motion to withdraw was required based upon a reading of Colorado Rule of Criminal Procedure 44(d). *People v. Cardenas*, 411 P.3d 956, 961–63 (Colo. App. 2015). Defense counsel sought to withdraw because of irreconcilable differences of opinion with the defendant, and even though the court scheduled a hearing on the motion, the motion was granted after defense counsel met in camera with a new judge assigned to the case. *Id.* at 959–60. Colorado Rule 44(d) required a defendant to be present at a hearing on defense counsel's motion to withdraw and provided a specific process for waiving such a hearing. The court concluded that it was "illogical and untenable" to construe Rule 44(d) as requiring a defendant to be present and then conducting "the only meaningful portion of the hearing . . . outside of his or her presence." *Id.* at 961.

We conclude that the right approach, as determined by the Mississippi Supreme Court, is a case-by-case determination of whether a defendant was deprived of a right to be present by considering the timing of the motion to withdraw, the facts and circumstances surrounding the reasons for withdrawal, whether other counsel has entered an appearance, and the nature of the discussion, if any. This approach is consistent with the language of Maryland Rule 4-214(d). The Maryland Rule, in contrast with the Colorado Rule, does not afford a defendant an absolute right to be present. The Maryland Rule provides two protections for a defendant when defense counsel seeks to withdraw: (1) the defendant can retain new counsel and file an objection to the motion to withdraw within ten days of the filing of the motion or (2) if the defendant is unrepresented, the court can grant the motion,

after balancing the need for judicial administrability with the due process rights of the defendant. In either case, a participatory hearing is not required. Rule 4-231—which is informed by the constitutional jurisprudence that the right to be present at trial is at critical stages of the proceedings—is therefore not always implicated.

We hold that a hearing with appellant present was not required in this case. Appellant does not dispute that his privately retained attorney followed the notice requirement of Rule 4-214(d) properly but contends that he never received that notice. The record before us contradicts this claim. Appellant's private attorney represented to the court that she sent notice to appellant and the State on May 11, 2017, and appellant sent his letter to the court over one month later, on June 15, 2017, indicating that he was no longer represented. The only question before us, therefore, is whether the conditions that would require a hearing under Rule 4-214(d) were implicated here.

We conclude that they were not. First, this motion was made well in advance of trial. Second, there is no evidence that the court and appellant's private attorney met to discuss the charges against him or that he was not provided an opportunity to defend against accusations that his private attorney made. There is no evidence, for example, that the court concluded that appellant was *in fact* combative or in violation of his agreement with his private attorney when granting her motion to withdraw. Third, while other counsel did not enter appearance on behalf of appellant before the motion to withdraw was granted, appellant's letter indicated that he was proceeding *pro se*, which triggered the requirement under Rule 4-214(d) that a hearing be held *after* the motion to withdraw is granted at which the *pro se* defendant is given information on the charges, advised of the desirability and

importance of seeking counsel, and advised that appearance at trial without counsel could constitute waiver of counsel. Appellant provides no evidence that he was denied an opportunity to defend against the charges he faced or that the Order striking appearance affected the fairness of the entire trial. The decision not to hold a hearing did not violate his constitutional rights.

As to appellant's claim that the trial court deprived him of his right to counsel of his choice, we disagree. We hold that the Order striking the appearance of appellant's private attorney did not deprive appellant of his right to counsel of his choice. The Sixth Amendment's right to counsel is not absolute; a defendant cannot "insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant." *Wheat v. United States*, 486 U.S. 153, 159 (1988). Appellant's private attorney notified the court that she wanted to withdraw because appellant was uncooperative and not abiding by the terms of his agreement with her. Appellant has no right to representation from an attorney with whom he failed to cooperate, and we reject this argument.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

CARRINGTON STURGIS	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
	*	**Petition Docket No. 434 September Term, 2019**
v.	*	
	*	**(No. 520, Sept. Term, 2018 Court of Special Appeals)**
	*	**(Nos. 116222023 & 116222024, Circuit Court for Baltimore City)**
STATE OF MARYLAND		

ORDER

Upon consideration of the petitions for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above-captioned case, it is

ORDERED, by the Court of Appeals of Maryland, that the petitions be, and they are hereby, DENIED as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera

Chief Judge

DATE: March 27, 2020

Appendix C (1)

STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.
GOVERNOR

OFFICE OF THE PUBLIC DEFENDER
ADMINISTRATION
DISTRICT #1 BALTIMORE CITY
201 SAINT PAUL PLACE, 1st Floor
BALTIMORE, MARYLAND 21202
Ph. (410) 333-4900 ext. 206 Fax (410) 333-4864
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PAUL B. DEWOLFE
PUBLIC DEFENDER

BECKY FELDMAN
DEPUTY PUBLIC DEFENDER

KIRSTEN GETTYS DOWNS
DISTRICT PUBLIC DEFENDER

NATASHA DARTIGUE
DEPUTY D STRICT PUBLIC DEFENDER

January 31, 2018

Mr. Carrington Sturgis, SID#: 3308519
JCI
P.O. Box 534
Jessup, Maryland 20794

Re: Case# 116222023

Dear Mr. Sturgis:

I am in receipt of your recent correspondence.

I am forwarding your letter to Andrea Jaskulsky, Esq, the panel attorney that is assigned to represent you in the above case number. Ms. Jaskulsky will address your concerns and assist you in this matter. You may direct future correspondence to:

Andrea Jaskulsky, Esquire
217 N. Charles Street, 2nd Floor
Baltimore, Maryland 21201
(410) 539-2639

If you need any further assistance, please contact Ms. Jaskulsky.

Sincerely,

Kirsten Gettys Downs
District Public Defender

KGD:deh

Appendix E

cc: Andrea Jaskulsky, Panel Attorney

Carrington Sturgis PETITIONER -VS- STATE OF MARYLAND RESPONDENT	IN THE COURT OF APPEALS FOR MARYLAND CASE NO. 520

PETITION FOR WRIT OF CERTIORARI

TO THE CLERK OF THE COURT OF APPEALS OF MARYLAND:

Now comes Carrington Sturgis, # 463-986, Petitioner, Pro se, pursuant to Rule 8-303 et seq., of the Maryland Rules of Procedure and petitions this Honorable Court to grant the foregoing Petition for Writ of Certiorari. In support thereof, Petitioner states the following:

1. Petitioner is currently imprisoned at Western Correctional Institution, 13800 McMullen Highway, SW, Cumberland, Maryland 21502. Additionally, petitioner is unable to pay the court costs and filing fees associated with lodging this proceeding and requests leave to proceed in forma pauperis.
2. Petitioner seeks to have reviewed the Order of the Court of Special Appeals dated 9 day of December, 2019, Sept. Term 2018, Docket No: 520.

QUESTIONS PRESENTED FOR REVIEW

[A reference to pertinent constitutional provisions, statutes, ordinances, or regulations.]

1) Did the court abuse its discretion in refusing to ask voir dire questions about whether members of the venire were biased against appellant as a [illegible] to return for a second day of jury selection and whether members of the venire were afraid to answer questions in appellant's presence? [Continued on following pages]

STATEMENT OF FACTS

[A concise statement of the facts material to the consideration of the questions presented.]

[Use additional paper if necessary]

Refer to following pages

4) Was the evidence legally sufficient to sustain appellant's conviction?

5) Did the court abuse it's discretion in failing to address appellant's request to discharge counsel?

1) Voir Dire is Law French for "to speak the truth" and refers to a preliminary examination of a prospective juror by a trial court to decide whether he or she is qualified or competent to serve on a jury. Voir Dire, Black's Law Dictionary (10th Ed. 2014) Voir Dire is critical to implementing a defendant's right to have an impartial jury. See Pearson v. State, 437 Md. 350, 356, 86 A.3d 1232, 1235 (2014). "In Maryland, the sole purpose of voir dire is to ensure a fair & impartial jury by discovering the existence of specific cause for disqualification." Id. at 356, 86 A.3d at 1235. To that end, "on request, a trial court must ask a voir dire question about any of the voir dire questions is reasonably likely to reveal specific cause for disqualification." There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror, or (2) a collateral matter is reasonably likely to have undue influence over a prospective juror.

Prospective juror expressed a fear of answering the question that the court asked at the bench in front of the Appellant. The court subsequently questioned prospective juror number 648, one of which expressed fear about answering questions in front of Appellant (T2 84-87). Juror number 648 indicated that a couple of women were a little apprehensive, I think" (T2 84). Juror number 648 then indicated that one of the women who were, she did not see in court that day expressing that "She must have got out of it or something" (T2 85). A compound question arises when the court asked Juror 648, did she express some apprehension about answering these questions in front of the defendants and would that apprehension affect your ability to be fair and impartial in this case." (T2 85).

(U.S. v. Blitch 622 F.3d 658, 664-65 7th Cir. 2010) abuse of discretion when court refused to empanel a new venire after it was known that prospective jurors were discussing their safety fears.

The court refused to ask the entire panel the questions phrased as follows:

"Is there anything that's going on this date or yesterday that causes them not to want to serve on this jury."

The question which was individually voir dired to Juror #648

Each of which were conflict to the "safety of women" who were still prospective jurors that were passed by the missing juror who didn't follow the court's rules of coming back, and the fear of being asked questions in front of Defendant although 648 was stricken. In addition, the court first indicated that it would not individually voir dire the juror who complained obviously about court personnel not caring" then indicated that it would, but ultimately it appears the court failed to do so (TT. 32-33, 41-42) Refusing to ask these questions to the whole jury panel and or individuals shifts the weight of responsibility from the Courts to the Jurors themselves in figuring what is considered fair or impartial, revealing a bias directly related to Appellant, imposed on by the court itself. This including the answering of any discussion among fellow jurors concerning the fear of Appellant on January 22, 2018 during voir dire. The court abused its discretion in failing to ask the voir dire question proposed by defense counsel targeted at revealing a bias directly related to Appellant. There was widespread disaffection & fear, which was reasonably likely to be turned into bias toward Appellant. Mixed into the circumstances prompting defense counsel to propose the above questions was the fact that at least two prospective [illegible] was expressed fear about answering questions in the presence of Appellant. Contrary to the court's concern, the targeted question was pointed enough to elicit bias against Appellant among the circumstances on January 22, 2018.

Pringle v. State 361 Md. 1, 8-9, 356 ~~759~~ A.2d 819, 823, 824 (2000) this Court held that a trial court abused its discretion by asking during voir dire compound

questions. This Court observed that a trial court "must decide whether cause for disqualification exists for any particular [prospective juror]. That is not a position occupied, or a decision to be made, by the individual [prospective jurors]." Id. at 14-15, 759 A.2d at 826. This Court determined that, in Dingle, the trial court "avoided examination of each affected prospective juror as to the admittedly relevant matters and allowed each such person to make his or her own call as to his or her qualification to serve." Id. at 14, 759 A.2d at 826. Thus, "usurping the trial court's responsibility" to determine, in the final analysis, the fitness of the individual" prospective jurors. Court reiterated that the compound questions interfered with both the trial court's ability to determine whether prospective jurors were biased and the defendant's ability to move to strike prospective jurors for cause, stating:

Because the trial court did not require an answer to be given to the question as to the existence of the status or experience unless accompanied by a statement of partiality, the trial court was precluded from discharging its responsibility, i.e. exercising discretion, and at the same time, the defendant was denied the opportunity to discover and challenge [prospective jurors] who might be biased.

4) Was the evidence legally sufficient to sustain Appellant's conviction?

Appellate courts "review de novo the issue of whether the evidence is sufficient to sustain the convictions." Wilder v. State 191 Md. App. 319, 335 (2010). A conviction can not be sustained "on proof amounting only to strong suspicion or mere probability." Moye v. State 369 Md. 2, 13 (2002) (quoting White v. State 363 Md. 150, 163 (2001)). (Explaining that circumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient.)

The witnesses all admitted to using drugs habitually and on the night in question. [illegible] Davis being the only witness out of 4, whom states that she knew Appellant and met him through previous drug transactions (T5. 210). Each other witness maintaining that they've known Davis for quite some time, even staying

(with her daily. Bowers testifying to the fact that he would come and go as he pleased without knocking (T. 35) Walter Hall admitting there were times he would come to get some rest just to sleep on the couch (T. 79) Davis testified that Appellant stayed at her house a couple of times (T. 230) Bowers, Hall, nor Kotzer never seen Appellant or identified him. The State witnesses were so lacking in credibility that no rational trier of fact could have found Appellant guilty.

Davis is the most important of all the witnesses, being the only one supposedly to have seen the shooting and to have identified the shooter (T. 8, 159) An implausible scenario, due to the fact that it was testified per Davis there was no electricity in the home (T. 5, 206) which is contradicted by the other witnesses testimonies, Significantly Davis's sister was testified to the action of going to her home and coming to discuss helping her with her electricity by getting the utilities in her name, Fabricating to the court that he did not get high while there (T. 5, 17-18)

Beginning with her background, it is undisputed that Davis had been a drug addict for most of her life through July 2016, when the shooting occurred. It is undisputed that she was selling heroin and cocaine from the scene of the shooting, at the time of the shooting. It is undisputed that she had multiple prior convictions for theft and one for making a false statement which resulted in her giving false name to police. Crivens v. State, 172 P.3d 991, 999 (7th Cir. 1991) Witness prior criminal record or history of giving aliases to police when arrested material, because it impeached credibility of state's "Eyewitness witness". (T. 5 132-133). Davis admits to prior record & lies to police (T. 5, 178). Davis admits to the false statement she gave to police, which was actually a false name, for why she was arrested. She further stated, "She was sure she lied to the police on many occasions". It is undisputed that she and the other occupants of the house, at the time of the shooting, prior to the arrival of the alleged gunmen, were getting high, and when Davis was high she attended to remembering bits & pieces (T. 5 223-224)

Davis had a motive to kill Johnson. By her own admission, Johnson was sent to watch her and prevent her from stealing drugs. Also, Johnson had beaten her

Davis concern was also about leaving the body in the house (T5, 166) Walter Hall Stated "that he heard Charlene suggest to put the body in a trashcan" (T5 106-107) There is also the strange circumstance of Davis directing Hunter to drive Bowers home (T4 239, T5, 166) Bowers himself evening to his knowing Davis & Holness both left living about 11 or 12 (T7.8) It is impossible not to suspect Davis of dishonesty in the killing of Johnson. If Davis was extremely lacking in credibility because of her prior convictions, history of substance abuse and drug dealing, and her admission to being high on the night of the shooting, [illegible] "blood pieces" when she is high, then her motive for killing Johnson, coupled with her suspicious behavior post shooting, (Leaving and going straight to 5th & Cambria & getting T5 24-25) "While at 5th and Cambria calling "a guy" [illegible] T5 24, 249) is enough to preclude a rational juror from crediting her testimony. See Hucheraczyk v State 235 Md. 334, 337 (1964); but see Bailey v. State, 16 Md. App 93 (1972) (discussing limited application of Hucheraczyk) This conclusion is sufficient to establish absolutely, as the other witnesses did not see the shooting or Holness to identify Appellant as one of the two men who entered the house on the night of the shooting.

That said the other witnesses also lacked credibility. For example, Bowers testified that he made/participated in a 9-1-1 call, but evidence of same having been made was never found. (T4 156; T6 55-59) Also testifying that him and Jones Hunter moved Johnson off couch and placed him on blanket fully clothed until discovery. Bowers that Johnson was on blanket undressed in just a pair of boxers and socks with other clothes beside him. Makes, both witnesses accessories after the fact. (T4 41, 52-53) Hall, quite suspiciously, took great pains to retrieve personal identification documents from the scene of the shooting, and in the estimation of Bowers Hunter testified that he did not use drugs on the night in question, while Davis testified that they all got high. The end Result is that Appellant's convictions must be reversed.

5) Did the court abuse its discretion in failing to address appellants request to discharge counsel?

Appellant argues that the court addressed improperly his request for new counsel to represent him at sentencing. Appellant contends that both the January 31, 2018 letter from the Office of the Public Defender and the February 9, 2018 motion for new trial sufficed to "trigger the court's duty" to inquire into appellants reasons for wishing to obtain new counsel.

In Williams 435 Md at 486-87 "The defendant sent a letter to the Circuit Court stating that his assistant public defender was ineffective, and requesting new representation from the public defender's office." ID at 479 Although Williams did not reiterate his written request to remove his attorney in the subsequent court appearances the Court of Appeals held that Williams letter to the Circuit Court was sufficient to require the Circuit court to conduct an inquiry consistent with the rigors of Rule 4-215(c)

For the foregoing reasons, Appellant respectfully requests that this Court reverse the judgement of the court below.

Respectfully Submitted,

Carrington J. Sturgis 463-756

Carrington J. Sturgis 463-756

STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.
GOVERNOR

OFFICE OF THE PUBLIC DEFENDER
APPELLATE DIVISION
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BALTIMORE, MD 21202

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PAUL B. DEWOLFE
PUBLIC DEFENDER

BECKY FELDMAN
DEPUTY PUBLIC DEFENDER

BRIAN SACCENTI
CHIEF ATTORNEY

February 21, 2020

Sturgis Carrington 463986/3308519
Western Correctional Institution
13800 McMullen Highway
Cumberland, MD 21502

Re: *Carrington Sturgis v. State of Maryland,* Court of Appeals, September Term, , No.

Dear Mr. Sturgis:

Enclosed is a copy of the State's answer to the petition for writ of certiorari that I filed in your case. It will be at least two months before the Court of Appeals decides whether to review the decision of the Court of Special Appeals. We will let you know as soon as the Court notifies us of its decision. Note that the State does not intend to respond to your pro se petition, unless asked by the Court of Appeals.

Sincerely,

Phyllis Roberts

PR/pr

Appendix C

CARRINGTON STURGIS,	IN THE
Petitioner,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2019
Respondent.	Petition Docket No. 434

ANSWER TO PETITIONS FOR A WRIT OF CERTIORARI

The State of Maryland, Respondent, respectfully submits that the petitions for certiorari filed by Petitioner Carrington Sturgis should be denied, further review being neither "desirable [nor] in the public interest." Md. Code, Cts. & Jud. Proc. § 12-203.[1]

Motions for leave to withdraw as counsel in a criminal case are governed by Maryland Rule 4-214(d). The rule sets forth precise requirements for how such motions are to be filed and ruled upon, but it does not contain any requirement that a court must hold a hearing before ruling on such a motion. Rather, if the court

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[1] Sturgis filed his initial petition for certiorari *pro se*, and subsequently filed another petition through counsel. Both petitions have been docketed under the same petition number. The State focuses the remainder of this answer solely on the counseled petition; however, the State will file a further response to the *pro se* petition if requested by the Court.

grants leave to withdraw, the rule requires the court to hold a hearing *thereafter*, to conduct the proceedings for the protection of the defendant's right to counsel that are required by Rule 4-215.

In the absence of any support in the text of Rule 4-214(d) for a requirement to hold hearings on motions for leave to withdraw, Sturgis urges this Court to take up his case in order to find some other source for such a requirement; he claims such a requirement could be discovered in the rights to be present at critical stages of trial and/or to counsel of choice. But there is no reason for this Court to accept his invitation. After Sturgis's retained counsel withdrew more than six months before trial, Sturgis promptly obtained the services of the Office of the Public Defender. At all proceedings thereafter, Sturgis was capably represented by an attorney from that office, and he made no complaint at trial about his previous attorney having been discharged until after he had been found guilty.

In an unreported opinion, the Court of Special Appeals researched decisions from other jurisdictions on whether a hearing is required on a defense attorney's motion to withdraw, and the scant cases it found to support such a requirement were factually

distinguishable or came from jurisdictions where (unlike in Maryland) a hearing is expressly required by court rule. *See Carrington Sturgis v. State*, No. 520, Sept. Term 2018, slip op. at 20-23 (filed Dec. 9, 2019) (Pet. App. 21-24). And, as the Court of Special Appeals recognized, the Sixth Amendment right to counsel of choice has no application where, as here, the defendant's supposed "counsel of choice" has declined the representation: "[A] defendant cannot 'insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant.'" *Id.*, slip op. at 25 (quoting *Wheat v. United States*, 486 U.S. 153, 159 (1988)) (Pet. App. 26).

Ultimately, if there is a policy argument to be made for requiring hearings under Rule 4-215(d), this Court could consider adding such a requirement to the rule via its rulemaking power. But there is no constitutional basis for such a requirement, nor do the circumstances of this case reveal any reason to use this particular case as a vehicle to consider creating one.

QUESTION PRESENTED

Where Maryland Rule 4-214(d) does not require a hearing to be held on a criminal defense attorney's motion for leave to withdraw, does neither the right to be present at critical stages of trial nor the right to counsel of choice create such a requirement?[2]

STATEMENT OF FACTS

The underlying facts are summarized in the Court of Special Appeals' unreported decision as follows:

> Late at night on July 9, or early in the morning of July 10, 2016, William Johnson was shot and killed at the home of Charlene Davis. Mr. Johnson, Ms. Davis, and three other individuals were at the house using drugs. Two men entered Ms. Davis's house and argued with and physically assaulted Mr. Johnson, and then one of the men fatally shot him.

Sturgis, slip op. at 2 (Pet. App. 3). Ms. Davis testified at trial that Sturgis, whom she had known for a year or two, was the shooter.

The following facts pertain to the motion for leave to withdraw filed by Sturgis's private defense attorney, Andrea E. Jaskulsky, Esquire:

> [Sturgis] first engaged counsel from the Office of the Public Defender to represent him and

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[2] The State has consolidated Sturgis's questions presented.

> subsequently retained private counsel [*i.e.*, Ms. Jaskulsky]. On November 18, 2016, private counsel entered her appearance on [Sturgis's] behalf. On May 11, 2017, private counsel sent a letter to [Sturgis's] last known address notifying him of her intent to withdraw from representation. On June 1, 2017, private counsel filed a motion in the Circuit Court to strike her appearance, indicating to the court that she wished to withdraw because [Sturgis] had "not complied with the terms of the agreement for counsel to represent him and . . . ha[d] been confrontational with counsel on various occasions." [Sturgis] sent a letter the court and the State on June 15, 2017 indicating that he was proceeding *pro se*. The State received the letter on June 28, 2017 and forwarded it to [Sturgis's] private counsel. The court struck private counsel's appearance by an order signed on July 7, 2017. Three weeks later, at a hearing on July 28, 2017, the assistant public defender whom [Sturgis] initially engaged [Robert T. Durkin, Esquire] entered his appearance on behalf of [Sturgis]. During this hearing, [Sturgis] claimed that he was unaware that his private attorney had withdrawn.[3] The public defender represented [Sturgis] at trial [which was held in late January and early February 2018].
>
> * * *
>
> At [Sturgis's] sentencing hearing on April 9, 2018, . . . [d]efense counsel argued that [a] letter [Sturgis had sent during trial to the Office of the Public Defender, requesting a panel attorney] showed that [Sturgis] wanted his former private counsel to represent him and that the court order striking her appearance before trial therefore denied [Sturgis's] right to counsel of his choice. The court denied the

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[3] However, Sturgis did not complain at the July 2017 hearing that he was entitled to a hearing on counsel's motion to withdraw.

motion[.][4]

Sturgis, slip op. at 3, 7 (footnotes omitted) (Cert. Pet. App. at 4, 8).

REASONS TO DENY THE PETITION

1.

This case presents no occasion to explicate Rule 4-214(d), because it is undisputed that the rule contains no hearing requirement.

This Court has often said that that the Maryland Rules, including the rules concerning appearance by counsel, are "precise rubrics." *E.g. Pinkney v. State*, 427 Md. 77, 87 (2012) (addressing Md. Rule 4-215). The rule that that governs motions to withdraw as counsel in criminal cases, Maryland Rule 4-214(d), contains no hearing requirement and, indeed, plainly contemplates that such motions may be granted without a hearing. The rule provides:

> A motion to withdraw the appearance of counsel shall be made *in writing* or in the presence of the defendant in open court. *If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion.* If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the

---

4 During trial, Sturgis's counsel, Assistant Public Defender Durkin, did not bring Sturgis's mid-trial letter to the court's attention.

> defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. *If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court.* The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. *If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.*

Md. Rule 4-214(d) (emphasis added).

It is clear from the text of the rule that a hearing is not necessary to rule on a motion to withdraw as counsel. The rule provides that counsel may make such a motion *either* in writing *or* in the presence of the defendant in open court. *Id.* In the event counsel chooses to file a written motion, the rule says nothing about requiring a hearing on the motion, but requires the attorney to give ten days' advance written notice to the defendant of counsel's intention to file it. *Id.* Most tellingly, the rule does not say that the court may only grant the motion in open court, and it expressly provides that the court *must* hold a hearing *after* granting the motion: "If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served

on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215." *Id.* If a hearing on the motion to withdraw were required, this provision would be superfluous, because the court could conduct the proceedings required by Rule 4-215 at the hearing on the motion to withdraw.

In other circumstances where this Court, in its rulemaking capacity, has mandated that a hearing must be held in order to grant a given type of motion, the Court has said so expressly. *See, e.g.*, Md. Rule 4-331(f) ("The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court."); Md. Rule 4-345(f) ("The court may modify, reduce, correct, or vacate a sentence only on the record in open court[.]").

Here, the circuit court's process in allowing Attorney Jaskulsky to withdraw her appearance followed Rule 4-214(d) to the letter. This case presents no opportunity to resolve a dispute over what the rule requires because there is no such dispute: Rule 4-214(d) does not require a hearing.

2.

This case does not present an issue for decision on the right to counsel of choice, because that right does not allow a defendant to conscript unwilling counsel.

Sturgis suggests that the Court should take this case to decide whether the circuit court "violate[d] [his] constitutional right to counsel of choice, as safeguarded under Maryland Rule 4-214(d)." (Pet. 2). But the right to counsel of choice is not implicated by the rule. This Court has said that Rule 4-214(d) is "designed to vindicate a criminal defendant's right to counsel," period—not the right to counsel of choice. *Simms v. State*, 445 Md. 163, 180 (2015). The rule does so by requiring notice to the defendant, authorizing a court to deny withdrawal "if it would unduly delay trial, would be prejudicial to a party, or otherwise would not be in the interest of justice," and by ensuring that if the court grants withdrawal, it "must then conduct proceedings under Rule 4-215 governing unrepresented criminal defendants." *Id.*

But allowing an attorney to withdraw upon proper notice to the defendant without necessarily holding a hearing does not implicate a defendant's right to counsel of choice. Rather, Supreme

Court precedent dictates that the "Sixth Amendment right to choose one's own counsel is circumscribed in several important respects," including the limitation that "a defendant may not insist on representation by an attorney he cannot afford *or who for other reasons declines to represent the defendant.*" *Wheat*, 486 U.S. at 159 (emphasis added); *see also United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (noting that the right to counsel of choice is a "right of a defendant who does not require appointed counsel" to be "'represented by an otherwise qualified attorney whom the defendant can afford to hire, or who is willing to represent the defendant even though he is without funds'") (citation omitted).

Here, Sturgis had privately retained Jaskulsky. In her motion, Jaskulsky asked to be relieved of her representation of Sturgis, explaining that Sturgis had "not complied with the terms of the agreement for Counsel to represent him and . . . ha[d] been confrontational with Counsel on various occasions," rendering Jaskulsky "unable to prepare for trial." Sturgis did not have a Sixth Amendment right to force Attorney Jaskulsky to represent him against her wishes. Although Sturgis repeatedly alludes to the right to counsel of choice, that right is not implicated in this

case under controlling Supreme Court precedent. The right to counsel of choice thus presents no basis for certiorari review here.

3.

None of the case law reviewed by the Court of Special Appeals and presented by Sturgis suggests that granting a motion to withdraw as counsel without a hearing implicates the right to be present at critical stages of trial.

The other source from which Sturgis gleans support for his proposed hearing requirement for motions to withdraw is the right of the defendant to be present at critical stages of trial. That right, which is guaranteed by the Maryland common law and constitutional due process principles, is implemented by Maryland Rule 4-231. *State v. Hart*, 449 Md. 246, 264-65 (2016). It provides: "A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered[.]"

Certainly, if a court does hold a hearing on a motion to withdraw, the defendant would be entitled to be present at that hearing. But that is not the same as a requirement to hold a

hearing in the first place. None of the cases that the Court of Special Appeals reviewed or that Sturgis presents suggests that a defendant's right to be present is impacted when a court rules on such a motion without a hearing.

Indeed, although the Court of Special Appeals surveyed case law across the country, it found only two cases that it saw as lending support to the notion that a hearing on a motion to withdraw should be required. *See Sturgis*, slip op. at 21 (citing *People v. Cardenas*, 411 P.3d 956 (Colo. App. 2015), and *Bradley v. Henry*, 510 F.3d 1093 (9th Cir. 2007) (en banc), *amended on denial of reh'g*, 518 F.3d 657 (9th Cir. 2008)) (Pet. App. 22).[5] And, upon even brief inspection, neither case actually indicates that the constitutional right to be present at critical stages of trial requires a hearing to be held on a motion to withdraw as counsel.

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[5] Although Sturgis cites several cases of this Court and the Supreme Court in support of the general importance of the rights to be present at critical stages of trial and to counsel of choice, Sturgis does not rely on any other cases from other jurisdictions in direct support of his claim. (*See* Pet. 4-13). *Hughes v. State*, 288 Md. 216 (1980), a decision of this Court that Sturgis cites repeatedly, involved a requirement to hold a hearing on a request for an eve-of-trial postponement, not a request to withdraw as counsel.

Cardenas is inapposite for two reasons. First and foremost, unlike in Maryland, hearings on motions to withdraw are required by the applicable court rule in that jurisdiction (Colorado). *See Cardenas*, 411 P.3d at 961 (citing Colo. R. Crim. P. 44(d)(2)). As Sturgis notes, there are some other jurisdictions that require hearings on motions to withdraw by rule. (*See* Pet. 8) (citing Vermont R. Crim. P. 44.2, and a local rule in a particular trial court in Missouri). In Maryland, as discussed, Rule 4-214(d) establishes no such requirement.

The second reason *Cardenas* is distinguishable is that in that case, the trial court *did* hold a hearing, but held it in chambers without the defendant being present, discussing defense counsel's withdrawal only with counsel. Ruling that the trial court abused its discretion, the *Cardenas* court said: "To conclude that Crim. P. 44(d)(2) requires a defendant to be present but then allows the only meaningful portion of the hearing to be held outside of his or her presence is illogical and untenable." 411 P.3d at 961.

Similarly in *Bradley*, a plurality decision of the Ninth Circuit, the trial court actually held a hearing in chambers with the prosecutor and defense counsel when deciding to allow defense

counsel to withdraw and appoint different counsel, but the defendant was not present and, indeed, the court actively concealed the existence of the hearing from her. *Bradley*, 510 F.3d at 1095-96, 1098. Later, the trial court in *Bradley* refused to allow the defendant to hire new counsel of choice. *Id.* at 1096 (plurality); *see also id.* at 1104 (Silverman, J., concurring). The Ninth Circuit has subsequently read *Bradley* narrowly, *see Miller v. Blacketter*, 525 F.3d 890, 896 (9th Cir. 2008), and even district courts within the Ninth Circuit do not view it as standing for the proposition that a defendant is "constitutionally entitled to a hearing concerning whether counsel should be removed." *Knowles v. Muniz*, 228 F. Supp. 3d 1009, 1021 (C.D. Cal. 2017). Here, of course, the court did not hold an *ex parte* hearing outside the defendant's presence, nor did the court force Sturgis to accept appointed counsel against his wishes.

Thus, neither the Court of Special Appeals nor Sturgis has been able to direct this Court to caselaw supporting the hypothesized constitutional requirement to hold a hearing on a motion to withdraw. The State respectfully suggests that the

dearth of precedent supporting Sturgis's claim is an indication that the claim is not one that merits this Court's plenary review.

4.

Even if this Court might find it prudent to establish a hearing requirement under Rule 4-214(d), this case would be a poor vehicle to do so.

As Sturgis notes, there are other jurisdictions that have required hearings on motions to withdraw as counsel by court rule. Certainly, this Court in its rulemaking capacity has the power to add such a requirement to Rule 4-214(d), if it were inclined to do so.

To be sure, there would be competing policy considerations to be weighed in such a decision. As with any hearing requirement, adding a hearing requirement to Rule 4-214(d) would enhance notice to the defendant and the accountability of judicial decisionmaking, but those benefits would come at the cost of the increased logistical burden of holding hearings on every motion to withdraw, including ones that are utterly routine (as, the State submits, was the one in this case). If the Court were inclined to consider whether to add a hearing requirement to the rule,

proceedings in the Rules Committee would give the Court the benefit of a diversity of perspectives on those policy tradeoffs and allow the Court to consider how a hearing requirement would operate in various scenarios, so that the Court could formulate a rule that gave precise and explicit guidance to trial courts.

But this case is a poor vehicle to use for resolving such a policy decision. Here, as noted, the procedure in the circuit court followed Rule 4-214(d) to the letter, and this case does not highlight any unusual quirk of the rule or particular hardship it creates. Rather, the rule operated as intended to ensure that Sturgis promptly obtained new counsel, and there is no indication that Sturgis suffered any prejudice from the substitution of counsel half a year before trial. As already discussed, no constitutional injury to Sturgis can be discerned. There is thus nothing distinctive about this case that would make it a suitable vehicle for this Court to consider an unexplored facet of the operation of Rule 4-214(d). There is no need for further review.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Dated: February 10, 2020

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 3,310 words.

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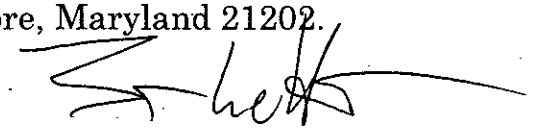
CERTIFICATE OF SERVICE

I certify that on this day, February 10, 2020, a copy of the foregoing "Answer to Petition for a Writ of Certiorari" was hand-delivered to Jeffrey M. Ross, Assistant Public Defender, Appellate Division, William Donald Schaefer Tower, 6 Saint Paul Street, Suite 1302, Baltimore, Maryland 21202.



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