

Circuit Court for Calvert County
Case No. C-04-CR-22-000162

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 111

September Term, 2023

RAY CHARLES LOCKAMY

v.

STATE OF MARYLAND

Leahy,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 8, 2024

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

A jury in the Circuit Court for Calvert County convicted Ray Lockamy, appellant, of two counts of malicious destruction of property. The court sentenced Lockamy to a term of three years and sixty days' imprisonment, with all but six months suspended. The court also ordered Lockamy to pay restitution.

In this appeal, Lockamy presents three questions, which we have rephrased for clarity¹:

1. Did the trial court abuse its discretion in denying Lockamy's request for a mistrial and instructing the jury on its "duty to deliberate" after the jury had informed the court that it was deadlocked, 11-to-one, on one of the charges?
2. Did the trial court err in limiting the testimony of a defense witness?
3. Did the trial court abuse its discretion in conducting its inquiry into Lockamy's mid-trial request to discharge counsel?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

In 2017, Daniel Coppers purchased a parcel of real property (the "Property") via a foreclosure sale. The Property included a driveway that was made of natural sediment and

¹ Lockamy phrased the questions as:

1. Did the trial court abuse its discretion in denying a motion for mistrial where the jury informed the court that it was hopelessly deadlocked 11-to-one, and then returned a verdict 43 minutes after receiving an ABA-approved *Allen* charge?
2. Did the trial judge err in precluding the testimony of Christina Sothern?
3. Did the trial court abuse its discretion in its handling of Appellant's announcement that he wished to discharge his attorney?

that was accessible via a locked gate. The Property had previously been owned by Lockamy.

On or around February 10, 2021, Coppers noticed that someone had dumped millings and other debris in large piles over the entire Property, including the driveway. In the following weeks, Coppers also observed that the lock to his front gate had been cut multiple times. In early March 2021, Coppers observed Lockamy using a wheelbarrow to place debris all around the Property. The piles of debris eventually settled, causing significant damage to the driveway. Coppers later testified that he never allowed Lockamy to use the Property and that there were no easements or any other right-of-way that authorized Lockamy's use the Property. Coppers called the police in March 2021, shortly after he observed Lockamy placing the debris on the Property.

Sgt. Eric Basham of the Calvert County Sheriff's Office responded to the call and spoke with Lockamy. During that conversation, Lockamy admitted to placing debris on the Property and to cutting the lock on the gate. Lockamy insisted that he had a right to access the Property's driveway. Lockamy averred that he tended to some animals on a nearby property and that the locked gate was preventing him from accessing those animals.

Lockamy was subsequently arrested and charged with two counts of malicious destruction of property. At trial, the primary issue was Lockamy's intent in placing the debris on the Property. Lockamy testified that, in the years leading up to the 2021 incident that resulted in the malicious destruction charges, he ran a farrier and horse-training business that was located adjacent to the Property. Lockamy stated that, during that time,

he would use the Property’s driveway to access the barn where he kept the horses. Lockamy admitted that, on at least one occasion, he cut the lock on the Property’s gate to access the driveway. Lockamy testified that he also placed millings and other debris around the Property in order to prevent erosion. Lockamy insisted that he had a right to access the Property and that he dumped the debris in order to maintain, not destroy, the Property. On cross-examination, Lockamy admitted that Coppers had never given him permission to access the Property.

The jury convicted Lockamy on both charges. This timely appeal followed. Additional facts will be supplied as necessary to inform our analysis.

DISCUSSION

I.

Lockamy’s first claim of error concerns an issue that arose during jury deliberations. At 10:46 a.m. on the second day of trial, the trial court excused the jury to begin deliberations. At 12:41 p.m. the court paused the deliberations so that the jury could have lunch, and the court instructed the jurors to return to court at 1:45 p.m. to resume deliberations. At 2:52 p.m., the jury sent the following note to the court: “We are 11 to 1 on a verdict for Count Two. The Juror in disagreement is stating he will not change his mind.”²

After the court shared the note with the parties, defense counsel asked for a mistrial.

² It is unclear from the trial transcript exactly when the jury returned from lunch and resumed deliberations.

The court denied the request and informed the parties that it would instead read Maryland Pattern Jury Instruction 2:01, which concerns the jury’s “duty to deliberate.” The court explained that, while the jurors had “been at it for a period of time,” they also went “through instructions and closing arguments” and “had a long lunch break.” The court concluded that the circumstances did not necessitate a mistrial. The court then read, verbatim, the pattern jury instruction to the parties and asked if there were any objections. Defense counsel renewed his mistrial request but agreed that the instruction was “the correct statement.” The court again denied the request, reiterating that it was “too early to do so.” After bringing the jurors back into the courtroom and reading the pattern instruction, the court excused the jurors to the jury room to resume deliberations. The jury returned guilty verdicts on both counts 43 minutes later.

Parties’ contentions

Lockamy argues that the trial court abused its discretion in denying his motion for mistrial. He asserts that the court’s decision to instead instruct the jury on its duty to deliberate was coercive and undermined his right to a unanimous jury verdict. Lockamy notes that, when the instruction was given, the vote was 11-to-one in favor of conviction and that, after the instruction was given, the jury returned a guilty verdict a mere 43 minutes later. Lockamy contends that, given those circumstances, it was clear that the lone holdout juror was “overwhelmed by the weight of a large majority and the prospect of prolonged and unpleasant further deliberations in a relatively straight-forward case in which they had already deliberated for most of a day.”

The State contends that the trial court properly denied Lockamy’s mistrial motion. The State notes that the jury had only been deliberating for a few hours when it informed the court that it was unable to reach a verdict on one of the counts. The State asserts that the court’s decision to give the pattern instruction on the jury’s duty to deliberate rather than grant a mistrial was not an abuse of discretion under the circumstances.

Analysis

We review the trial court’s decision to grant or deny a mistrial motion for abuse of discretion. *Nash v. State*, 439 Md. 53, 66–67 (2014). “[A] court’s decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 67 (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

In *Allen v. United States*, 164 U.S. 492 (1896), the Supreme Court of the United States approved the use of a jury instruction, now referred to as an “*Allen* charge,” in which deadlocked jurors were told that they should continue deliberating until they reach a unanimous verdict. The purpose of the instruction was to encourage jurors to reach a verdict and, in particular, to encourage dissenting jurors to reevaluate their views if those views differed from the positions of the majority. *Id.* at 501.

In *Kelly v. State*, 270 Md. 139, 140–43 (1973), the Supreme Court of Maryland recognized the potential for coercion inherent in the *Allen* charge and endorsed an “*Allen*-type” instruction that had been developed by the American Bar Association (“ABA”) and that utilized less coercive language. That instruction still encouraged jurors to deliberate

and potentially reexamine their views, but it did not ask dissenting jurors to doubt the reasonableness of their convictions if they disagreed with the majority. *Burnette v. State*, 280 Md. 88, 96 (1977). Additionally, the instruction charged all jurors to deliberate and consult with one another in an attempt to reach a verdict. *Id.* 96–97. That modified instruction, sometimes referred to as the “ABA-approved instruction,” was ultimately incorporated into Maryland’s “duty to deliberate” pattern jury instruction, which was the exact instruction given in the instant case. *Thompson v. State*, 371 Md. 473, 484–85 (2002); *see also* MPJI-Cr 2:01. Trial courts were thereafter encouraged to use the “duty to deliberate” pattern jury instruction when a jury is deadlocked because it avoided the coercive language of the original *Allen* charge. *Hall v. State*, 214 Md. App. 208, 218–21 (2013) (“Any deviation from the pattern instruction should be largely in form and style, and the instruction must adhere to the spirit and substance of the ABA-approved instruction.”).

In *Mayfield v. State*, 302 Md. 624 (1985), the Supreme Court of Maryland approved a trial court’s decision to give the “duty to deliberate” pattern instruction under circumstances similar to those in the instant case. There, the jury, after deliberating for several hours, informed the court that it could not reach a verdict on several charges and that the vote on those charges was 11-to-one in favor of conviction. *Id.* at 626. The court denied the defendant’s motion for a mistrial, choosing instead to give the jurors the ABA-approved instruction. *Id.* at 627–28. After the defendant was convicted and we affirmed, the Supreme Court of Maryland also affirmed, holding that the trial court had not erred or

abused its discretion. *Id.* at 631–32. In so doing, the Court rejected the notion that the instruction was coercive simply because the trial court was made aware of the numerical division amongst the jurors, calling such a notion “sheer speculation.” *Id.* The Court added that requiring the trial court to declare a mistrial under those circumstances “would be inconsistent with the settled principle that a trial judge’s determination to have a jury continue deliberating or to declare a mistrial is a matter largely within his discretion.” *Id.* at 631. The Court went on to note that a trial court’s discretion in making that determination is “broad” and should be “accorded great deference.” *Id.*

Returning to the instant case, we hold that the trial court did not abuse its discretion in denying Lockamy’s mistrial motion. To begin with, although Lockamy relies on the jury’s note regarding its numerical split to make the reasonable assumption that the vote was 11-to-one in favor of guilty, there is nothing in the note or elsewhere in the record to indicate that the jury was in fact leaning in that direction. It is possible, although less likely, that the jury’s vote was 11-to-one in favor of not guilty.

In any event, even if we assume that the lone dissenting juror was inclined to vote not guilty, we cannot say that the court abused its discretion in deciding to give the “duty to deliberate” pattern instruction rather than declare a mistrial. As in *Mayfield*, the jury had been deliberating for only a few hours, and the court, upon hearing that the jury was deadlocked, instructed the jury in the manner approved by our Supreme Court. Moreover, because the jury subsequently resumed deliberations at 3:00 p.m., there was still a reasonable amount of time left in the day such that the lone dissenting juror was unlikely

to be pressured by additional time constraints. That the jury returned a guilty verdict 43 minutes after being given the instruction is by no means indicative of coercion. In fact, were we to hold that the court’s instruction was coercive under the circumstances presented here, we would be hard-pressed to imagine a situation in which such an instruction would not be coercive. Perhaps that explains why we could find no case in which a Maryland court has declared an abuse of discretion where a trial court has chosen to give an ABA-approved instruction rather than declare a mistrial under circumstances akin to those presented here. We conclude that the court did not abuse its discretion when it gave the “duty to deliberate” instruction in this case.

II.

Lockamy’s next claim of error concerns the trial court’s decision to limit the testimony of a defense witness, Christina Sothern. At trial, during the defense’s case-in-chief, Lockamy called Sothern to testify. Sothern stated that she knew Lockamy from volunteering at the horse ranch he owned near the Property. Sothern testified that she first went to the Property on June 5, 2021.

At that point in Sothern’s testimony, the State objected, and the court convened a bench conference. At that bench conference, the State argued that Sothern’s testimony should be excluded because Lockamy was charged with criminal conduct occurring in February and March of 2021, months before Sothern ever visited the Property. Defense counsel proffered that Sothern “was there” and “saw the condition of the road” and “how it was being used.” Defense counsel suggested that Sothern could testify to “the condition

of the road and whether they removed the gravel.” The court ultimately sustained the State’s objection, finding that Sothern’s testimony was not relevant to the issues before the jury. Defense counsel then indicated that he did not have any further questions, and Sothern was excused from the witness stand.

Parties’ contentions

Lockamy argues that the trial court erred in limiting Sothern’s testimony. Lockamy contends that Sothern’s testimony was relevant because she “was privy to charitable activities taking place at the ranch” and therefore could have testified “to his good character.” Lockamy also highlights testimony Sothern gave during the subsequent sentencing hearing, in which Sothern stated that she frequently observed Coppers using a jackhammer to break up concrete on the Property’s driveway. Lockamy argues that Sothern’s trial testimony was therefore relevant for the additional reason that it refuted Coppers’s claim that Lockamy caused all the damage to the Property.

The State contends that neither of Lockamy’s arguments is preserved because neither argument was raised at trial. The State argues further that the court properly limited Sothern’s testimony as irrelevant.

Analysis

We agree with the State that Lockamy’s arguments on this issue are not preserved. Maryland Rule 5-103 states, in pertinent part, that a party may not claim error on a ruling that excludes evidence unless “the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was

offered.” Md. Rule 5-103(a)(2). Moreover, the rules governing preservation and appellate review require that, where a party proffers grounds for the admission of evidence at the trial level and the court excludes the evidence on those grounds, the party is generally precluded from raising alternative theories of admissibility on appeal. *Goldman, Skeen & Wadler, P.A. v. Cooper, Beckman & Tuerk, L.L.P.*, 122 Md. App. 29, 49–50 (1998) (holding that, where appellant argued at trial that document was admissible under one hearsay exception, appellant had failed to preserve argument that document was admissible under a different hearsay exception).

Here, the State objected to Sothern’s testimony on the ground that Sothern did not see the condition of the Property until months after the acts that served as the basis for the criminal charges against Lockamy. When the court asked how Sothern’s testimony would be relevant, Lockamy merely insisted that Sothern could testify to the condition of the driveway, how it was being used, and whether the debris had been cleared. At no point did Lockamy state, or even suggest, that Sothern could testify as to Lockamy’s character or Coppers’s responsibility for causing damage to the Property’s driveway. Accordingly, those claims are not properly before this Court.

As to the grounds raised at trial, we hold that the trial court did not err in finding Sothern’s testimony irrelevant. Relevant evidence is evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. As noted, Sothern’s knowledge of the condition and use of the Property was limited to the

time period after June 5, 2021, which is the date she first visited the Property. Those facts, *i.e.*, the condition and use of the Property after June 5, 2021, were not of consequence to the determination of the action. As such, we cannot say that the court erred in precluding Sothern’s testimony.

III.

Lockamy’s final claim of error concerns a request he made, during trial, to discharge counsel. At the beginning of the second day of trial, after both parties had rested but before closing arguments, defense counsel informed the court that Lockamy was dissatisfied with counsel’s performance. After excusing the jury, the court asked Lockamy to elaborate. Lockamy stated that defense counsel failed to call several witnesses, including a land surveyor, whose testimony Lockamy thought would have helped his case. Lockamy stated that he was dissatisfied and wanted to discharge counsel. The court asked Lockamy to expound on the substance of the witness’s testimony, and Lockamy did. After considering Lockamy’s proffer, the court stated that defense counsel had “done a good job” and that, given the late stage of the trial, the court was not inclined “to end the trial” just because Lockamy was “not happy with how things have gone.” Lockamy responded that the witnesses were “important” and that he had been told that the witnesses were going to testify. Lockamy added that he believed the “deck” was “stacked” against him because the State was allowed to choose which evidence to present against him.

After considering Lockamy’s explanation, the court reiterated that it would not end the trial simply because Lockamy was suddenly unhappy with “how things have

proceeded.” The court then informed Lockamy that he had the choice to move forward with or without counsel, and Lockamy responded that he wanted to represent himself for the remainder of trial. When the court asked Lockamy how he planned to do that, Lockamy complained that the evidence against him was “not correct” and that there was other evidence that he wanted admitted but that his attorney had chosen not to introduce. The court then asked defense counsel to respond, and defense counsel stated that, while he was unclear as to the exact nature of the evidence that Lockamy claims had not been introduced, he had made some judgment calls about certain evidence.

Following its exchange with defense counsel, the court asked Lockamy if he wanted to “try and represent [himself] and argue the law,” noting that Lockamy would “be at a disadvantage” if he did not understand the law. Lockamy stated that he had no confidence in defense counsel and that he wanted the opportunity to “speak” and “tell [his] story.” When the court reminded Lockamy that he had already done that via his trial testimony, Lockamy complained that one of the other witnesses had made some statements that were “never addressed.” The court responded that defense counsel had “done a good job” and stated that removing defense counsel would put Lockamy “at a disadvantage.” The court took a fifteen-minute recess, and the court encouraged Lockamy to speak with both his family and defense counsel during the break. At the conclusion of the recess, Lockamy informed the court that he no longer wished to discharge counsel.

Parties’ contentions

Lockamy claims that the trial court “abused its discretion in its handling of [his]

announcement that he wished to discharge his attorney.” Lockamy argues that the court failed to exercise the appropriate discretion because it did not address all of the requisite factors that a court must consider when a defendant expresses a desire to discharge counsel during trial. Lockamy argues that the court also failed to apply those factors “dispassionately” and to accord the necessary deference to his decision to represent himself for the remainder of trial.

The State contends that the trial court’s handling of the matter was not an abuse of discretion. The State asserts that the court properly considered all the requisite factors and accorded adequate deference to Lockamy’s choice to discharge counsel. The State asserts further that, even if the court erred, any error was harmless because all of the factors weighed against Lockamy’s request to discharge counsel.

Analysis

“A defendant’s request to discharge counsel implicates two fundamental rights that are guaranteed by the Sixth Amendment to the United States Constitution: the right to the assistance of counsel and the right of self-representation.” *State v. Campbell*, 385 Md. 616, 626–27 (2005) (footnote omitted). When a request to discharge counsel is made prior to trial, the trial court must follow the procedures set forth in Maryland Rule 4-215. When, however, the request is made after meaningful trial proceedings have begun, the strictures of Rule 4-215 do not apply, and the decision whether to permit the discharge of counsel lies within the sound discretion of the court. *Id.* at 632–33. In making that determination, “[t]he court must conduct an inquiry to assess whether the defendant’s reason for dismissal

of counsel justifies any resulting disruption.” *State v. Brown*, 342 Md. 404, 428 (1996).

That inquiry should include consideration of the following factors:

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

Id.

Nevertheless, a trial court is not required to adhere to any particular regimen when addressing the above factors. *State v. Hardy*, 415 Md. 612, 628–29 (2010). Rather, all six factors “may be considered in a brief exchange between the court and the defendant about the defendant’s reasons for requesting the dismissal of defense counsel.” *Id.* at 629. In fact, “the court need not do any more than supply the forum in which the defendant may tender this explanation.” *Id.* at 628. In other words, while a trial court must “conduct an inquiry” into a defendant’s request to discharge counsel, “the only burden this places on the court is the duty to *provide an opportunity* for the defendant to give an explanation.” *Id.* at 630 (quoting *Brown*, 342 Md. at 428). Thus, “trial courts abuse their discretion when they fail to allow a defendant any opportunity to explain his or her request at all, thus making it impossible to consider the six factors.” *Id.* at 629.

These principles compel us to conclude that the trial court here did not abuse its discretion. The record makes plain that the court engaged in a lengthy inquiry into Lockamy’s request to discharge counsel. During that inquiry, the court provided Lockamy ample opportunity to explain his decision. In addition, the court expressly addressed the

merit of Lockamy’s request, the quality of counsel’s representation, the timing and disruptive effect of a potential discharge, and the stage of the proceedings when the request was made. The only factor that the court did not expressly identify was any prior requests by Lockamy to discharge counsel, which was understandable given that it does not appear that Lockamy made any such prior requests. The court even granted Lockamy a brief recess to allow him to confer with family members regarding his decision. We commend the court for affording Lockamy that opportunity, and note that he ultimately decided that he did not wish to discharge counsel. In short, there is absolutely no merit to Lockamy’s claims that the court failed to exercise the appropriate discretion and failed to accord the necessary deference to his decision to represent himself. That the court, during its inquiry, may have emphasized the quality of defense counsel’s representation while deemphasizing certain other factors was by no means an abuse of discretion warranting reversal.

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