Circuit Court for Frederick County
Case No: C-10-CR-18-000446

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 289

September Term, 2019

BRIAN ONLEY

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury sitting in the Circuit Court for Frederick County found Brian Onley, appellant, guilty of possession of cocaine with intent to distribute and conspiracy to distribute cocaine. The court sentenced him to 20 years' imprisonment, with all but six years suspended, for the distribution offense and to a consecutive 20-year term, all suspended, for the conspiracy. On appeal, he contends that (1) the suppression court erred in denying his motion to suppress evidence and (2) the trial court abused its discretion in denying his request, made on the second day of trial, for new counsel. Finding no error in the suppression ruling or any abuse of discretion related to the new counsel request, we shall affirm the judgments.

Suppression of Evidence

At a suppression hearing, the parties stipulated to the following facts. On April 6, 2018, a search warrant was executed at a townhome where Mr. Onley, April Mills, and three young children resided. Two vehicles – including a "2007 truck" registered to Ms. Mills – were parked in front of the townhome or "slightly askew" thereto in spaces designated for the Onley-Mills residence. Prior to the issuance of the warrant for the home, the police had observed Mr. Onley driving the truck and knew that, approximately two months earlier, he had been "arrested for DUI in that vehicle, and one of the conditions of the DUI" was the installation of an "Interlock" or "breathalyzer" system. When the police arrived at the townhome, they observed the truck and that it was equipped with the Interlock system. A Maryland State Police officer arrived with a K-9 to "scan" the truck while other officers executed the search warrant issued for the residence. After the dog gave a positive alert "to the odor of CDS," the police conducted a warrantless search of the truck and

recovered "baggies of cocaine and a scale."[1] No controlled dangerous substances were recovered from the residence. Mr. Onley was arrested. Ms. Mills was arrested later, but not that day.

The defense moved to suppress the contraband recovered from the truck, arguing that there was no exigency to justify its warrantless search. (The parties had stipulated that the warrant was for the residence only.) The suppression court concluded that the K-9 alert established probable cause for the warrantless search of the vehicle and, therefore, denied the motion. On appeal, Mr. Onley reiterates the arguments he made before the suppression court, but acknowledges that in *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996), the United States Supreme Court stated that, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."

We hold that the suppression court did not err in refusing to suppress the contraband found in the truck because the vehicle was "readily mobile," could have been driven away after the police left by Ms. Mills (the registered owner), and, most significantly, the K-9 alert provided the probable cause to believe that the vehicle contained contraband. *See Grimm v. State*, 458 Md. 602, 649-50 (2018) (an alert by a dog trained and proficient in drug detection provides probable cause to search a vehicle) (citing *Florida v. Harris*, 588 U.S. 237 (2013)).

[1] At trial, the State produced evidence that the cocaine recovered from the truck totaled 150 grams.

Request for New Counsel

On the first day of trial, the jury was selected, opening statements given, and the State presented two of its three witnesses. On the morning of the second day of the two-day trial, before any evidence was presented, the following colloquy occurred:

> [DEFENSE COUNSEL]: [***] Your Honor, preliminarily I know Mr. Onley would like to make a motion with the Court –
>
> THE COURT: All right.
>
> [DEFENSE COUNSEL]: – regarding my services.
>
> THE COURT: Mr. Onley, if you'd stand up, please.
>
> [DEFENSE COUNSEL]: I did want to let the Court know, after that, depending on the disposition, I do have another request for relief.
>
> THE COURT: All right. Sir.
>
> MR. ONLEY: Yeah. I'd like to file a motion for a request for a new attorney.
>
> THE COURT: Well, do you have another attorney who's ready to step in here right now?
>
> MR. ONLEY: Not right now, but I do have one that –
>
> THE COURT: Well today is the trial.
>
> MR. ONLEY: Yeah, I know today is the trial, but I feel as though I ain't being represented fairly. So I'd like to request for a new attorney. I don't feel –
>
> THE COURT: Well, all –
>
> MR. ONLEY: – I don't feel as though I've been represented fairly in this case.
>
> THE COURT: All the evidence is to the contrary –
>
> MR. ONLEY: I'm just –

THE COURT: – from my perspective. I'm just telling you that.

MR. ONLEY: I know you told me. I'm just saying, you asked me and –

THE COURT: All right. Okay.

MR. ONLEY: – that's what I'm asking the Court.

THE COURT: Well, here's the thing. I – if you want your attorney dismissed, I'll consider it but that would mean it would be – you would be stuck with representing yourself here today to finish this trial.

MR. ONLEY: Yeah. I would ask that I can hire –

THE COURT: I can't –

MR. ONLEY: – have another attorney.

THE COURT: I, I can't give you another trial because jeopardy is already attached. We've already – we're already halfway through the trial. So a continuance would require – well, would be a fatal error in your case. So I can't do that. If you had an attorney who was ready to step in right now and would enter his appearance and – I, I would allow that to happen, but the only – but absent that, the only choice you have is to continue with [defense counsel] as your attorney, and you know what I thought of what he had done, or you take it over yourself, which you're not an attorney, correct?

MR. ONLEY: No, I'm not an attorney.

THE COURT: Right. I don't – I wouldn't advise that, let's put it that way.

MR. ONLEY: All right. Well, that's, if that's what the Court – I just, I just wanted to make a motion for it so it'd be –

THE COURT: All right. Well, then, the –

MR. ONLEY: – on the record. That's what I wanted to do.

THE COURT: – the motion for another attorney –

MR. ONLEY: Well I just wanted to request –

THE COURT: – is coupled with a motion to continue the case.

MR. ONLEY: Okay. Well, I just wanted to request another attorney because I don't feel as though the attorney I have was representing me right.

THE COURT: I, I –

MR. ONLEY: Now, whatever your decision is, I just want it to be let it known. That's how I want it to be.

THE COURT: Well, I – no, and I understand that, but, but I have to rule on it in this fashion. Your –

MR. ONLEY: I understand.

THE COURT: – request for a change in attorney would necessitate a continuance, and I'm denying the continuance.

MR. ONLEY: Okay.

THE COURT: Okay? So you've let me know that you wanted a change of attorney. Do you want to finish the case by yourself, or do you –

MR. ONLEY: No, I don't want to finish the case by myself I don't think –

THE COURT: All right. Well, then –

MR. ONLEY: – that'd be fair to do that.

THE COURT: Well, of course not. I –

MR. ONLEY: Yeah.

THE COURT: – I agree with you on that.

MR. ONLEY: Yeah.

THE COURT: All right. So you're withdrawing under that circumstance, you're withdrawing your motion –

MR. ONLEY: Yeah.

THE COURT: – to take –

MR. ONLEY: Yeah, I don't want to be – I don't want to represent myself.

> THE COURT: I agree. Okay. I think that's a smart move. All right. Then if you'd have a seat, yes, sir.

On appeal, Mr. Onley asserts that his "request to obtain a different attorney was, in essence, a request to discharge the attorney he had in favor of a new attorney." He acknowledges that, because trial had already commenced, Maryland Rule 4-215 (e) was inapplicable. Rather, he correctly notes that the court had the discretion to rule on his request, after considering the following factors set forth in *State v. Brown,* 342 Md. 404 (1996): "(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.* at 428. Mr. Onley's sole contention is that the trial court failed to conduct an adequate assessment as to the reason he was seeking to discharge his counsel and, therefore, "the court had no factual basis for exercising its discretion" in ruling on the request.

The State responds that the trial court satisfied its burden under *Brown* by providing Mr. Onley the opportunity to express his reasons for seeking new counsel and was not obligated to probe further and, therefore, properly exercised its discretion when denying the request. We agree with the State.

As the Court of Appeals has stated, the trial court must "provide the defendant the opportunity to explain his or her reasons for making the request; in other words, the court need not do any more than supply the forum in which the defendant may tender this explanation." *State v. Hardy,* 415 Md. 612, 628 (2010). In short, it is "the defendant's

duty to explain fully the reasons for the request after this opportunity has been provided; rather than there being a continuing burden on the trial judge to probe the defendant with questions until the defendant has given a fuller answer." *Id.* at 628 n. 12. Accordingly, we will find an abuse of discretion only "when [the trial court] fail[s] to allow a defendant any opportunity to explain his or her request at all, thus making it impossible to consider the six factors in *Brown.*" *Id.* at 629.

As the colloquy reproduced above reflects, the trial court gave Mr. Onley a forum in which to explain the reasons for his request, which he articulated as a belief that he was not being "represented fairly in this case" and that he desired "another attorney" because he did not believe his present counsel "was representing [him] right." He did not elaborate, despite the opportunity given to speak freely to the trial judge. As noted, the court was not obliged to probe further into why Mr. Onley believed his counsel was not representing him "fairly" or "right." Moreover, the court's assessment of defense counsel's representation – having presided over jury selection, opening statements, and testimony from two State witnesses – was to the contrary. Thus, we reject Mr. Onley's contention that court erred by "not identify[ing] and "consider[ing]" his reasons for seeking substitute counsel before ruling on the request.

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