Circuit Court for Howard County
Case No. 13-K-17-058249

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 614

September Term, 2018

CHARLES C. WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 6, 2020

Charles C. Williams was convicted in the Circuit Court for Howard County of offenses relating to distribution of marijuana. He alleges four errors on appeal: *first*, that the trial judge described the differences between a bench and jury trial inaccurately; *second*, that the trial judge erred in sending a "dead count"—a charge for possession of controlled paraphernalia—to the jury for consideration; *third*, that the trial judge should have asked prospective jurors the "crime witness" and "organizational affiliation" questions during *voir dire*; and *fourth*, that the trial judge failed to comply with Maryland Rule 4-215 when Mr. Williams indicated his desire to discharge counsel. We decline to review the first two issues because they are not preserved. We also disagree with Mr. Williams that the trial judge should have asked the "crime witness" and "organizational affiliation" questions, and that the trial judge did not comply with Rule 4-215. We affirm his convictions.

I. BACKGROUND

On September 20, 2017, Mr. Williams was charged with possession of marijuana with intent to distribute after a traffic stop. He elected to have a jury trial, and on March 12, 2018, he was tried and convicted. The circuit court sentenced Mr. Williams to six months of incarceration. He filed a timely notice of appeal. We supply only those facts necessary to resolve the issues before us.

The traffic stop occurred on August 24, 2017. Corporal Erik Gillenwater, who stopped Mr. Williams, asked for a canine officer to conduct a narcotic scan of the vehicle. After the dog "alerted," Corporal Gillenwater searched the car and found two bags

containing twenty smaller bags of marijuana. Officer Cortez, also present at the stop, searched Mr. Williams's person. Both searches yielded no scales, weapons, or anything else that indicated drug dealing. The officers also found $70.44 in cash on Mr. Williams's person.

Before trial, the circuit court asked Mr. Williams whether he wanted a bench trial or a jury trial. After the court explained the difference between the two, the judge (mis)stated that either the judge or a jury would have to be convinced beyond a reasonable doubt of Mr. Williams's guilt to convict him or innocence to acquit him. Mr. Williams elected to have a jury trial:

> [DEFENSE COUNSEL]: And are you electing to have a trial by jury?
>
> [MR. WILLIAMS]: Yes.
>
> THE COURT: All right. Mr. Williams, let me explain something to you, sir. A jury trial consist[s] of 12 members selected from the motor vehicle in the voter rolls of Howard County. You would have the same selection of those 12 jurors. They would sit as the finders of fact. They would have to be convinced unanimous and beyond a reasonable doubt before you could either be convicted or acquitted. Or you could have a court trial where the judge i.e. me. I would sit as the finder of fact. I would have to be convinced beyond a reasonable doubt before you could be convicted or acquitted. Do you wish to have a jury trial or do you wish to have a court trial?
>
> [MR. WILLIAMS]: The jury.
>
> THE COURT: All right. He elects to have a jury.

Defense counsel never objected to the instruction.

During *voir dire*, defense counsel asked the court to question members of the venire whether they had been a witness to a crime (the "crime witness" question), and whether

they were members of neighborhood watch organizations (the "organizational affiliation" question). The court declined to ask the "crime witness" question:

> THE COURT: The victim in the witness of a crime?
>
> [DEFENSE COUNSEL]: Yes, Your Honor.
>
> THE COURT: All right. That issue was addressed by the Court of Special Appeals a few years ago as a result of that case. I can't think of the name off the top of my head. I am declining to give that since the court said we don't need to give that. What's the other question?

The court also declined to ask the "organizational affiliation" question:

> THE COURT: Twenty-two. The Casa, Neighborhood Watch, Guardian Angels. All right. I decline to give that one as well. Anything else, counsel?
>
> [DEFENSE COUNSEL]: Well, Your Honor, we would just reserve our right to object.
>
> THE COURT: That's fine. . . .
>
> [DEFENSE COUNSEL]: And would you like me to place those on the record now for preservation or would you like me to do that after the–
>
> THE COURT: Technically I don't know if it's preserved until after I give the voir dire. I mean, you can put your objections on the record now and then incorporate them after I give the voir dire. I think you'll be protected that way or you can wait until afterwards. Whichever you prefer.
>
> [DEFENSE COUNSEL]: Thank you. I'll wait. That's fine, Your Honor.

Defense counsel, during *voir dire*, incorporated her objections into the record:

> [DEFENSE COUNSEL]: We would just like to put on the record that we have two questions that were not asked. And we feel that by not [asking] them it would be a [bias]. It would not be revealed. It could have been revealed by asking them. And that is questions 14.
>
> THE COURT: You said 14A and B which is the victim and []

> witness part of the question that the court gave. Okay. That part. And as I indicated, that the court is declining to give that question based on the rule.
>
> [DEFENSE COUNSEL]: And, Your Honor, could I read those into the record?
>
> THE COURT: I'm sorry?
>
> [DEFENSE COUNSEL]: [Could] I read those into the record?
>
> THE COURT: Oh, sure. 14A and B.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: What [sic] any member of the panel ever been a victim of a crime or a witness to a crime?
>
> [DEFENSE COUNSEL]: And number 22, Your Honor.
>
> THE COURT: Yeah, I didn't get to that one yet. I am just still addressing the first one. Okay. And then Number 22, the specific questions: Have you or any members of your family ever been associated with, contributors to, or in any way involved with any local, state, []or national community group or organization to combat crime or help crime victims such as Casa, Operation Identification, Neighborhood Watch, Guardian Angels, Mothers Against Drunk Drivers, or similar organizations.
>
> [DEFENSE COUNSEL]: Thank you, Your Honor.
>
> THE COURT: That was your Number 22 and I read that upon your request. And I have declined to give that. As I had indicated I believe the voir dire the court has given is sufficient enough to weed out any people that may have impartialities or biases especially saying that the court did ask the last question, is there anything I didn't ask you about which you feel would tend to interfere with your ability to be fair and impartial? So that was the reason for the record why the court declined to give that instruction. Anything else []?
>
> [DEFENSE COUNSEL]: Subject to my previous objection, Your Honor, I'm satisfied. Thank you.

Right before trial, Mr. Williams requested a continuance because of non-specific health problems. The court inquired into the nature of Mr. Williams's health issues and

refused to postpone the case on those grounds:

> THE COURT [TO DEFENSE COUNSEL]: Do you have a problem with the court asking your client directly?
>
> [MR. WILLIAMS]: No, you can ask me. Well, I'm just letting her know. She don't know. I just let her know today because if we go through trial and I have to get time or get incarcerated I don't–I can['t] get that type of help in prison.
>
> THE COURT: That's a separate issue for us, sir.
>
> [MR. WILLIAMS]: Yes.
>
> THE COURT: That's not a reason for us to postpone the case.
>
> [MR. WILLIAMS]: Oh, okay.
>
> THE COURT: Until such time as 10 years from now whenever your medically discharged as a fine and healthy human b[eing]. That's not a reason, sir.

Mr. Williams then indicated a desire to discharge counsel so he could find private counsel.

The court inquired into his request, then denied the continuance:

> [DEFENSE COUNSEL]: In addition, Your Honor, he has told me today that he would like to try to get private counsel in the case.
>
> THE COURT: Okay. What is your reason, sir?
>
> [MR. WILLIAMS]: I just feel fit [sic] that she's like not ready for the case or something.
>
> THE COURT: Well, let me ask [defense counsel].
>
> [MR. WILLIAMS]: Okay.
>
> THE COURT: Are you—do you feel that you're ready to represent your client? Are you prepared?
>
> [DEFENSE COUNSEL]: I feel like I am ready, Your Honor.
>
> THE COURT: Thank you. So back in November you were told of your right to counsel, private or public defender. That if you did not have counsel that the court could force you to go to trial even without counsel. You've explained that you have a concern that your attorney was not ready for trial. She's a long term member of the bar. A long term attorney. She appears

> before this court regularly.
>
> As far as I know and as far as I've always seen [defense counsel] has always been prepared. And when she feels she needs more time to prepare a case, she says so. She asks for a postponement. Just last week in another case she said that she felt she needed more time to review additional discovery so I know that she's not shy about doing that. That she represents her clients fully and completely. Did you have any other concerns?
>
> [MR. WILLIAMS]: Just a medical issue.
>
> THE COURT: Okay. [] what's the State's position?
>
> [THE STATE]: Your Honor, I would defer to the court. I will tell the court because the nature of the charges I have all professional witnesses [and] they are officers and a chemist so my witnesses will be available.
>
> THE COURT: Okay.
>
> [THE STATE]: So whatever the court determines is fine.
>
> THE COURT [TO DEFENSE COUNSEL]: Is there anything else [] you wish to say?
>
> [DEFENSE COUNSEL]: Your Honor, I would just say that, you know, he did get here on November 8th and he got the dates and we have not asked for any postponements. You know he's, you know, not comfortable today going forward. And if the court could grant a postponement in order for him to be able to talk to a private attorney and do that. That, you know, I think that would be in the interest of justice.
>
> THE COURT: I don't agree with you. I think today is the day and I think that's why Mr. Williams doesn't want to go to trial. Postponement is denied. There's no meritorious request for the postponement. Thank you.

At the close of trial, the circuit court instructed the jury on the crimes of possession of marijuana with the intent to distribute and possession of drug paraphernalia:

> THE COURT: Intent is a state of mind and ordinarily cannot be proven directly because there was no way of looking into a person's mind. Therefore a defendants intent may be shown by surrounding circumstances. And determining the defendants

> intent you made the [sic] considered the defendant's acts and statements as well as the surrounding circumstances. Further, you may but are not required to infer that a person ordinarily intends the natural [and] probable consequences of his ask. The defendant is charged with the crime of possession of marijuana with the intent to distribute. In order to convict the defendant the State must prove that the defendant possessed marijuana and the defendant possessed marijuana with the intent to distribute some or all of it.
>
> Distribute means to sell, exchange, or transfer possession of the substance or to give it away. No specific quantity is required for you to find the intent to distribute. There is no specific amount below which the intent to distribute this appears and there is no specific amount above which the intent to distribute appears. You may consider the quantity of the controlled dangerous substance along with all other circumstances in determining whether the defendant intended to distribute the controlled dangerous substance.
>
> The defendant is charged with the crime of possession with the intent to use drug paraphernalia. In order to convict the defendant the State must prove that the defendant possessed with the intent to use drug paraphernalia. Drug paraphernalia means any equipment or materials used or intended to use in the packaging of a controlled dangerous substance. Paraphernalia includes a container used, intended for use, or designed for use in packaging small quantities of a controlled dangerous substance.

The jury found Mr. Williams guilty of both crimes. The court sentenced him to six months incarceration, and he filed a timely notice of appeal. We supply additional facts below as appropriate.

II. DISCUSSION

On appeal, Mr. Williams asks us to vacate his conviction and remand for a new trial

based on four errors.[1] *First*, Mr. Williams argues that he didn't elect a jury trial knowingly because the circuit court misinformed him of the standard for acquittal in a bench trial. *Second*, he claims that the jury's consideration of the charge for possession of controlled paraphernalia, which applied only to substances other than marijuana, deprived him of a fair trial because it was a "dead count" on this record. *Third*, Mr. Williams argues that the circuit court wrongly declined to ask prospective jurors the "crime witness" question and "organizational affiliation" question. *And finally*, Mr. Williams contends that the circuit court did not engage in the inquiry required under Maryland Rule 4-215 after he expressed dissatisfaction with his counsel.

A. Mr. Williams Failed To Preserve The First Two Issues For Appellate Review.

The State points out in its brief, and we agree, that Mr. Williams's counsel failed to preserve the first two issues for appeal. Ordinarily, we "will not decide any . . . issue unless

[1] Mr. Williams phrased his Questions Presented as follows:

> 1. Was Appellant misinformed by the trial judge with respect to the election of court or jury trial?
> 2. Was Appellant deprived of a fair trial by the jury's consideration of (and temporary conviction for) a wholly inapplicable offense?
> 3. Did the trial court abuse its discretion, constituting reversible error, when it declined to ask the venire whether anyone had been a witness to a crime and whether anyone was affiliated with any organizations like the neighborhood watch?
> 4. Did the trial court fail to fully comply with Rule 4-215 after Appellant indicated a possible desire to discharge counsel?

it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131. To preserve an issue for appellate review, a party must object at the time the ruling is made. Md. Rule 4-323(c). If a party is given an opportunity to object but fails to do so, he has waived the objection. *Hill v. State*, 355 Md. 206, 219 (1999). At trial, the defense never objected to the inaccurate advice given by the trial court, nor to the jury's consideration of the "dead count" at trial. That left the trial court no opportunity to address these errors, and we will not address them now.

B. The Circuit Court Did Not Abuse Its Discretion In Declining To Ask The "Crime Witness" And "Organizational Affiliation" Questions.

Mr. Williams advances three arguments in support of his position that the circuit court erred in declining to ask the "crime witness" and "organizational affiliation" questions. He argues *first* that these questions, particularly the "organizational affiliation" question, and no others, would unveil specific biases likely to influence a prospective juror unduly. He argues *second* that the failure to ask these questions interfered with his right to exercise comparative rejection of potential jurors. He argues *third* that the court committed reversible error by failing to ask the questions later. The State responds in a slightly different order: it argues *first* that the "crime witness" and "organizational affiliation" questions were overbroad and not directly related to the case; *second*, that other questions sufficiently addressed the issues in the case; and *third*, that there is no distinct right to comparative rejection.[2] The last of these is the easiest: as the State contends, there is no

[2] The State also asserts, without any support, that the "crime witness" and "organizational

separate right to comparative rejection—the overall process of identifying potentially biased panel members sets up the opportunity to challenge or strike jurors. Mr. Williams doesn't allege any error in the process of selecting or striking jurors, only in the range of questions asked to the panel, and thus the universe of information available to counsel going into that process. *Cf. Booze v. State*, 347 Md. 51, 69 (1997) ("These various provisions, including [what is now Rule 4-312(f)], need to be read together, and, when so read, they communicate clearly this Court's intent that, to the extent possible, the parties should have before them the entire pool of prospective jurors before being required to exercise any of their peremptory challenges.").

In Maryland, our "limited *voir dire* methodology is designed "to ensure a fair and impartial jury by determining the existence of cause for qualification . . . ." *Washington v. State*, 425 Md. 306, 312 (2012) (citations omitted); *see* U.S. Const. amend. VI; Md. Decl. of Rts. Art. 21. The *voir dire* process is committed to the sound discretion of the trial court, especially the scope and form of the questions asked. *Washington*, 425 Md. at 313. "An appellate court reviews for abuse of discretion a trial court's 'rulings on the record of the *voir dire* process as a whole.'" *Collins v. State*, 463 Md. 372, 391 (2019) (quoting *Pearson v. State*, 437 Md. 350, 356 (2010)).

But discretion over the *voir dire* process is not unlimited. *See Moore v. State*, 412 Md. 635, 666 (2010) (*citing Casey v. Roman Catholic Archbishop of Balt.*, 217 Md. 595,

affiliation" questions "were attempts to 'fish' for information to aid in the exercise of peremptory strikes." Whether or not that was true, we need not resolve whether Mr. Williams was motivated by anything other than identifying bias.

605 (1958)). In considering whether the court should have asked a particular question, "the standard is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present" and whether the matter has been fairly covered by other questions. *Washington*, 425 Md. at 313 (citations omitted). "On request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 357 (2014) (*quoting Moore v. State*, 412 Md. 635, 663 (2010)) (alterations in original). There are two categories of specific cause for disqualification, and only the second is at issue here: when (1) a statute disqualifies a prospective juror; or (2) the juror suffers from a bias directly related to the crime, witness, or defendant. *Id.* at 357.

The circuit court was not required to ask the "crime witness" question or the "organizational affiliation" question in this case. "A juror's having had prior experience as a juror, witness, victim or defendant in a criminal proceeding of any kind, or in one involving a crime of violence, is not *per se* disqualifying." *Perry v. State*, 344 Md. 204, 218 (1996). And the "organizational affiliation" question is not a mandatory question—the decision to ask it remains within the sound discretion of the circuit court. *See Washington*, 425 Md. at 324 (explaining that because the proposed *voir dire* question was not mandatory, "it was within the sound discretion of the trial judge"). Furthermore, the court asked: "Does any member of the panel have strong feelings about the crime of possession of marijuana with the intent to distribute"? We agree with the State that this question makes the "crime witness" and "organizational affiliation" questions unnecessary because any

prejudice elicited by the questions would be discovered through the "strong feelings" question. *Cf. Pearson*, 327 Md. at 360 ("The 'strong feelings' *voir dire* question makes the 'victim' *voir dire* question unnecessary by revealing the specific cause for disqualification at which the 'victim' *voir dire* question is aimed."). The circuit court did not abuse its discretion when it refused to ask those questions.

C. The Circuit Court Complied With Rule 4-215(e).

Finally, Mr. Williams argues that the circuit court failed to comply with Maryland Rule 4-215 after he expressed dissatisfaction with his counsel. The State agrees that the requirements of Rule 4-215(e) were triggered, but responds that the court complied with the Rule when it inquired why Mr. Williams wanted to discharge counsel and found no meritorious basis for him to do so. We agree with the State.

We review *de novo* whether the court complied with Rule 4-215(e). *Gutloff v. State*, 207 Md. App. 176, 180 (2012). If we find that the court has complied with Rule 4-215(e), we review for abuse of discretion the court's determination that a defendant had no meritorious reason to discharge counsel. *State v. Taylor*, 431 Md. 615, 630 (2013). An abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (*quoting North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 135 S. Ct. 284 (2014).

Rule 4-215(e) requires the court, once a defendant expresses an intention or request to discharge counsel, to inquire into the defendant's reasons and determine whether there

is any merit to them:

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

The Court of Appeals articulated a three-step process the trial court must follow:

> *(1) The defendant explains the reason(s) for discharging counsel*
>
> While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to their perceptions of the reasons and need for discharge of current defense counsel.
>
> *(2) The court determines whether the reason(s) are meritorious*
>
> The rule does not define "meritorious." This Court has equated the term with "good cause." This determination–whether there is "good cause" for discharge of counsel–is an indispensable part of subsection (e) and controls what happens in the third step.
>
> *(3) The court advises the defendant and takes other action*
>
> The court may then take certain actions, accompanied by appropriate advice to the defendant, depending on whether it found good cause for discharge of counsel–*i.e.*, a meritorious reason.

Dykes v. State, 444 Md. 642, 652 (2015) (internal citations omitted).

The circuit court followed that process in this case. The court asked Mr. Williams his reasons for wanting to discharge his counsel, and he responded that he believed his counsel was not ready for trial. The court questioned Mr. Williams's counsel on whether she was prepared, and she indicated she was. And the court was familiar with defense counsel's conduct because she appeared regularly before him in other matters, and informed Mr. Williams that counsel was a "long term attorney," "always . . . prepared," and "when she feels she needs more time to prepare a case, she says so."

On this record, the court did not abuse its discretion in finding no merit in Mr. Williams's proffered reasons for seeking to discharge his counsel. Rule 4-215(e) does not define "meritorious," and it has been said that evaluating a defendant's reasons for discharging counsel is like navigating an "ugly patch of difficult terrain." *Garner v. State*, 183 Md. App. 122, 127 (2008). But in evaluating a defendant's proffered reasons, "a trial court may choose to credit or discredit the arguments presented, and after doing so, must use its own judgment in making a ruling." *Cousins v. State*, 231 Md. App. 417, 444 (2017). After questioning defense counsel on her preparedness, and noting her track record in appearing before the court, it was reasonable for the court to conclude that defense counsel was prepared for trial, and that Mr. Williams's request lacked merit. And from that point, the court did not err in declining to postpone the trial or allow Mr. Williams a new opportunity to find substitute counsel.

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