Circuit Court for Baltimore City
Case No.: 119227017

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 723

September Term, 2022

STEPHEN WASHINGTON

v.

STATE OF MARYLAND

Wells, C.J.
Nazarian
Beachley

JJ.

Opinion by Wells, C.J.
Concurring Opinion by Nazarian, J.

Filed: July 12, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The State indicted appellant Stephen Washington in the Circuit Court for Baltimore City, Maryland and charged him with the first-degree murder of Nathaniel Greene, attempted first-degree murder of Perry Bailey, attempted first-degree murder of Demetric Greene, and several conspiracy and handgun-related counts. Following a jury trial, Washington was convicted of the lesser included offenses of second-degree murder of Nathaniel Greene, attempted second-degree murder of Demetric Greene, two counts of use of a firearm during a crime of violence, and wearing, carrying and/or transporting a handgun. The court sentenced Washington to an aggregate forty (40) years' incarceration, the first five without possibility of parole, to be followed by five years' probation. On this timely appeal, Washington asks us to address the following questions:

> 1. Was the evidence insufficient to sustain the convictions for second-degree murder, attempted second-degree murder, two counts of using a handgun during a crime of violence, and wearing and carrying a handgun?
>
> 2. Did the trial court err/abuse its discretion in allowing a police detective to testify the police only recovered the murder weapon in very few of the homicides the detective had investigated?
>
> 3. Was Washington's waiver of counsel at sentencing knowing and voluntary?

For the following reasons, we shall affirm.

BACKGROUND

This case involves a shootout that involved multiple individuals on the evening of July 20, 2019, in the 2800 block of Boarman Avenue near Reisterstown Road in Baltimore City. Nathaniel Greene was shot and died from multiple gunshot wounds. Two other men,

Demetric Greene, and Perry Bailey were also shot and survived, but did not testify at trial. Washington was also shot and was arrested shortly after he sought medical treatment.

Ballistics evidence established that there were at least three guns used during the shootings and numerous .9 mm and .40 caliber cartridge casings were recovered from the area. Further, currency and a pill bottle with suspected controlled dangerous substance were found at the scene. Finally, a handgun was seized from victim Demetric Greene's waistband, but there was no evidence that this gun was ever fired. No other firearms were recovered in this case.

Most of the activity that evening, before and after the victims were shot, was captured on nearby surveillance video, without audio, and that video was played for the jury during trial. In addition, this evidence was supplemented by details from Washington's recorded interview with Detective Jonathan Riker, taken approximately four hours after the shooting, and while Washington was recovering from a gunshot wound.[1]

As shown in the video, a lot of pedestrians were out and about near Danny's Lounge, located at 4316 Reisterstown Road, throughout the course of the evening. The pertinent footage begins at 10:27:10, when two men, one of whom was wearing white clothing and the other wearing dark clothing, walk northbound along Reisterstown Road, from upper right to center in the video, and then turn left on to the south side of Boarman Avenue.

[1] This Court granted Washington's Unopposed Motion to Correct the Record with the transcript of his recorded interview on December 13, 2022.

During the interview, Washington admitted that he was wearing a dark navy shirt that evening, and that he and a companion were on their way to the bar to buy "weed," and get a drink.

As Washington and his companion continued down Boarman, Washington is seen turning his head to look around, notably back at another group of individuals standing closer to the intersection of Reisterstown and Boarman. Then, and within seconds after they disappeared from view, Washington and his companion run back the way they came along Boarman. Washington's companion, the man wearing white, is seen firing a handgun back over his shoulder as they flee. They then run back to Reisterstown Road, turn right and disappear off screen.

Within a few seconds after they disappear off screen, an unidentified vehicle stops near the intersection of Reisterstown and Boarman. That vehicle's driver gets out of the vehicle and fires several shots towards Washington and his companion. Washington's companion is seen putting Washington into an unidentified vehicle. Later, at around 11:00 p.m. that same evening, Washington walked into St. Agnes Hospital with a gunshot wound.

During the police interview, Washington admitted he was present when the gunshots began and that he was shot in the back when he tried to flee. Washington then requested a lawyer and the interview ended.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Washington first contends the evidence was insufficient to sustain his convictions because the State presented no evidence that he was a shooter or an accomplice. Specifically pointing to the ballistics and video surveillance evidence in detail, Washington argues there was no evidence that he either possessed or fired a gun that evening, and, that he or his companion fired the first shot. He continues that he was simply a "bystander" and, the State's accomplice liability theory was based entirely on speculation that he and the man wearing the white shirt, with whom he walked to and from the crime scene, had a "conspiratorial or personal" relationship.

Recognizing that this argument was not made in the trial court, Washington argues we may address the issue either: (a) under the discretionary provisions of Maryland Rule 8-131 (a); or (b) as ineffective assistance of counsel under *Testerman v. State*, 170 Md. App. 324 (2006), *cert. dismissed as improvidently granted*, 399 Md. 340 (2007). The State responds that the issue is not preserved, does not amount to ineffective assistance, and is without merit in any event. We shall first address the extent to which the issue amounts to a procedural default.

A. Washington's sufficiency challenge is unpreserved.

At the end of the State's case-in-chief, Defense Counsel made a motion for judgment of acquittal, arguing as follows: "Your Honor, I can tell the Court, I don't have

any specific argument as to any specific counts. I'll make my motion in general and I'll submit on that, so." The court denied the motion, as follows:

> Okay. I mean, there's certainly overwhelming evidence that three people were shot. As to Mr. Washington's agency, I supposed, based on what I've seen and heard, a jury could determine that there was sufficient evidence that the two people who were fleeing the scene were related to the shooting. So I will deny this at this particular time.

The defense did not present any evidence following this ruling, and again submitted without argument at the end of the case.

A motion for judgment of acquittal made at the close of all the evidence is a prerequisite to a claim of evidentiary insufficiency on appeal. *Haile v. State*, 431 Md. 448, 464 (2013); *see also* Md. Code (2001, 2018 Repl. Vol.) § 6-104 of the Criminal Procedure Article ("Crim. Proc."); Md. Rule 4-324. Rule 4-324(a) provides, in pertinent part, that "[a] defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted." Because "[t]he language of [Rule 4-324(a)] is mandatory," *Wallace v. State*, 237 Md. App. 415, 432 (2018) (quoting *State v. Lyles*, 308 Md. 129, 135 (1986)), "a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient,'" *Arthur v. State*, 420 Md. 512, 522 (2011) (quoting *Starr v. State*, 405 Md. 293, 303 (2008)). "Rule 4-324(a) is not satisfied by merely reciting a conclusory statement and proclaiming that the State failed to prove its case." *Arthur*, 420 Md. at 524. "Accordingly, a defendant 'is not entitled to appellate review of reasons stated

for the first time on appeal.'" *Id.* at 523 (quoting *Starr*, 405 Md. at 302). Choosing to "submit" without articulating reasons justifying acquittal is a waiver of any complaint with respect to the sufficiency of the evidence. *Garrison v. State*, 88 Md. App. 475, 478 (1991), *cert. denied*, 325 Md. 249 (1992).

Here, Washington made a motion for judgment of acquittal at the end of the State's case-in-chief and renewed it at the end of all the evidence, but he offered no reasons in support thereof and simply submitted. Although we recognize that "an appellant/petitioner is entitled to present the appellate court with 'a more detailed version of the [argument] advanced'" below, *Starr*, 405 Md. at 304 (internal quotations omitted), here, Washington advanced no particularized argument whatsoever. Under the circumstances, we decline to consider the possible "offshoots" of arguments never made. *See id*. ("When ruling on a motion for judgment of acquittal, the trial court is not required to imagine all reasonable offshoots of the argument actually presented.").

Apparently recognizing the preservation problem under Maryland Rule 4-324 (a), Washington observes that the trial court did articulate its reasons for denying the motion and argues we may exercise our appellate discretion under Maryland Rule 8-131 (a). Generally, "an appellate court has discretion to excuse a waiver or procedural default and to consider an issue even though it was not properly raised or preserved by a party." *Jones v. State*, 379 Md. 704, 713 (2004); *see, e.g.*, *Moosavi v. State*, 355 Md. 651, 661 (1999) (addressing a sufficiency challenge, even though it was not raised in the appellate court, where it was raised with specificity in the trial court); *Bible v. State*, 411 Md. 138, 147-51

(2009) (considering a specific appellate argument that a sexual assault crime was for the purpose of sexual arousal or gratification even though the general argument in the trial court was that the touching was not intentional) (discussing *Williams v. State*, 173 Md. App. 161, 167-68 (2007)).

Here, in denying the motion, the trial court found there was no dispute that three people were shot and that a rational fact finder could determine that the two people seen fleeing the scene were related to the shooting. On appeal, Washington presents much more detailed arguments going to the sufficiency of the ballistics and video surveillance evidence, including the location of casings and bullet holes found throughout the area, the lack of any evidence as to who fired the first shot, the lack of audio evidence from the surveillance tapes, the argument that Washington was merely present as a bystander, and the specific liability arguments that there was no evidence that he acted either as a principal or an accomplice in the shooting. Again, we are presented with more detailed arguments beyond that which were contemplated by the trial court. In holding that Washington's first issue is unpreserved, we are guided by the following principle:

> Although this Court may "address the merits of an unpreserved issue," that discretion "is to be rarely exercised and only when doing so furthers, rather than undermines, the purposes of the rule." The purposes of Rule 8-131(a) are furthered in "cases where prejudicial error was found and the failure to preserve the issue was not a matter of trial tactics."
>
> The purpose of the preservation rule is to "prevent[] unfairness and requir[e] that all issues be raised in and decided by the trial court, and these rules must be followed in all cases[.]" Put another way, the rule exists "to prevent 'sandbagging' and to give the trial court the opportunity to correct possible mistakes in its rulings." [*Bazzle v. State*, 426 Md. 541, 561 (2012)

> (internal citations omitted)]; *see also* [*Robinson v. State*, 410 Md. 91, 103 (2009)] ("Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.") (internal citations and quotations omitted). An appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should counsel "rely on this Court, or any reviewing court, to do their thinking for them after the fact."

Peterson v. State, 444 Md. 105, 125-26 (2015) (cleaned up and quoting *Grandison v. State*, 425 Md. 34, 69-70 (2012), *Abeokuto v. State*, 391 Md. 289, 327 (2006), and *Conyers v. State*, 354 Md. 132, 150 (1999)). We conclude that the issue of evidence sufficiency is not preserved and decline to consider it.

B. We decline to consider Washington's ineffective assistance claim.

Next, relying on *Testerman v. State*, 170 Md. App. 324 (2006), *cert. dismissed as improvidently granted*, 399 Md. 340 (2007), Washington argues that his trial counsel's failure to preserve the sufficiency claims amounts to ineffective assistance of counsel. The State disagrees with Washington's argument under *Testerman*, suggesting that counsel made a strategic decision not to offer particularized argument.

Ineffective assistance of counsel claims are governed by the settled doctrine of *Strickland v. Washington*, 466 U.S. 668 (1984). Pursuant to *Strickland*, a prisoner claiming ineffective assistance of counsel rendered his conviction or sentence invalid must show (1) "counsel's representation fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 688, 694.

Ordinarily, an ineffective assistance claim is more appropriately resolved in a collateral proceeding initiated under the Post-Conviction Act. *See* Md. Code (2001, 2018 Repl. Vol., 2022 Supp.), §§ 7-101 through 7-301 of the Criminal Procedure Article. *See Robinson v. State*, 404 Md. 208, 219 (2008) ("[A] claim of ineffective assistance of counsel should be raised in a post-conviction proceeding, subject to a few exceptions"); *accord Mosley v. State*, 378 Md. 548, 558-59 (2003); *see also Washington v. State*, 191 Md. App. 48, 71 ("[T]he appropriate avenue for the resolution of a claim of ineffective assistance of counsel is a post-conviction proceeding"), *cert. denied*, 415 Md. 43 (2010). As our Supreme Court[2] has repeatedly pointed out, although it is possible for an appellate court to address a claim of ineffective assistance of counsel on direct appeal, "'[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel's ineffectiveness.'" *Bailey v. State*, 464 Md. 685, 704 (2019) (quoting *Mosley*, 378 Md. at 560).

As indicated, Washington relies on *Testerman.* There, although this Court found the record sufficiently developed to find ineffective assistance of counsel for failing to particularly argue sufficiency of the evidence, there was no significant dispute concerning

[2] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

the facts constituting the offense. *Testerman,* 170 Md. App. at 331, 336. The only issue was whether, as a matter of law, a driver switching seats with his passenger after a traffic stop constituted "fleeing and eluding by other means." *Id*.

Here, the only facts that were undisputed was that Washington was present at the scene, and that three people were shot; four, if Washington is included. Throughout the trial, Washington disputed the State's evidence, specifically the ballistics and surveillance evidence, showing where and when the guns were fired, whether he was seen firing a gun, and suggested that the State's case was all based on "imagination." *Testerman* is inapposite.

Furthermore, some merit to the State's suggestion that defense counsel's decision not to particularize the sufficiency argument was strategic. Defense counsel stated: "Your Honor, I believe that the Motion for Judgment of Acquittal by Defense is the – I've tried hundreds of jury trials … and I've gotten partial traction for some counts, maybe two or three times." It is arguable that counsel believed this case was not going to fit that exception. Notably, both by his own admission and the video evidence, Washington was clearly present at the scene of the shootout and was seen in the company of one of the shooters.

Finally, although we have no further indication of counsel's strategy from the record on direct appeal, we also note that counsel was successful in obtaining acquittals on the greater offenses. Washington was originally charged with first-degree murder of Nathaniel Greene and two counts of attempted first-degree murder of Demetric Greene and Perry Bailey, respectively. The jury returned acquittals with respect to those counts. Indeed, the

jury acquitted Washington with respect to all counts concerning alleged victim, Perry Bailey. For these reasons, we decline to consider Washington's allegation of ineffective assistance on direct appeal.

II.

Next, Washington asserts the court erred and abused its discretion in overruling his objection to Detective Riker's testimony that, in general, police recovered the murder weapon in very few cases. Washington's argument is that this evidence was irrelevant and that the probative value was substantially outweighed by the danger of unfair prejudice.

The testimony at issue from Detective Riker was follows:

> Q. Now, in this case, did there ever come a point in time when a firearm – when one of those unknown firearms that was fired, the three that were fired during the incident, were any of them ever recovered?
>
> A. No, ma'am.
>
> Q. And based on your – how many years have [you] been with the Police Department?
>
> A. My 18th year.
>
> Q. And how many years have you been in Homicide?
>
> A. Ten.
>
> Q. And the homicides that you've been involved in that were shootings, how many times has the murder weapon actually been recovered?
>
> [DEFENSE COUNSEL]: Your Honor, I'm going to object to that question.
>
> THE COURT: I'll allow it. You can ask him that.
>
> DET. RIKER: My cases, very few.

Evidence is relevant if it 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. The bar for relevancy is "low." *Otto v. State*, 459 Md. 423, 452 (2018); *Williams v. State*, 457 Md. 551, 564 (2018) (describing relevancy as "a very low bar to meet"). To be relevant, "evidence must tend to establish or refute a fact at issue in the case." *Thomas v. State*, 397 Md. 557, 579 (2007) (relying on *Merzbacher v. State*, 346 Md. 391, 404-05 (1997)); *see also Snyder v. State*, 361 Md. 580, 591-92 (2000) ("Relevance is a relational concept…the relevancy determination is not made in isolation") (citations omitted).

But if evidence fails to clear this hurdle, it is inadmissible, and trial judges have no discretion to decide otherwise. *See* Md. Rule 5-402 ("Evidence that is not relevant is not admissible"). Trial judges also receive no deference for their relevancy determinations as these are legal conclusions subject to de novo review on appeal. *Brethren Mutual Insurance Co. v. Suchoza*, 212 Md. App. 43, 52, *cert. denied*, 434 Md. 312 (2013).

Further, even if the proffered evidence was relevant, that would not prevent exclusion:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Md. Rule 5-403; *see also Decker v. State*, 408 Md. 631, 640 (2009) ("Relevant evidence may be excluded, however, if it is unfairly prejudicial, confusing to the fact finder, or a

waste of time"); *Newman v. State*, 236 Md. App. 533, 551 (2018) (noting specifically the distinction between unfair and legitimate prejudice).

Here, although the defense did not focus on the fact that the murder weapons were not recovered, the defense did challenge the State's ballistics and surveillance video evidence on the grounds that none of that evidence ever proved that Washington possessed or shot a handgun on the evening in question. Prior to the testimony at issue, defense counsel questioned the State's firearms expert and elicited that: three guns were fired that evening; shell casings from semi-automatic weapons, namely, two .9 mm and one .40 caliber casings were recovered; a gun was recovered from one of the victims; and, that gun did not fire any of the casings found at the scene.

In addition to this evidence, during closing argument, defense counsel challenged the State's theory of the case as "based on imagination." Counsel specifically argued the State wanted the jury "to imagine" that Washington had a gun and "shot people." And that, there was no evidence of his possessing or shooting a gun in the surveillance videos.

On appeal, Washington maintains that the testimony was irrelevant because "there was no dispute at trial that there was a shooting … [t]he dispute was over who fired the guns." Although we agree that the threshold question of relevancy is problematic, we are persuaded that the fact that "very few" guns are recovered in such cases, in fact, did relate to this dispute. Indeed, it is arguable the evidence offered an explanation why the guns clearly seen being fired back and forth in the surveillance video were never subjected to forensic testing, thereby addressing any potential argument challenging the adequacy of

the police investigation. *See, e.g. Atkins v. State*, 421 Md. 434, 458 (2011) (Harrell, J., concurring) (explaining the "CSI effect" on jury verdicts when ballistics analysis is not submitted for consideration); *see also Fullbright v. State*, 168 Md. App. 168, 176, 181-82 (affirming in a case considering the admissibility of lay opinion evidence that the reason the police did not submit a bloody knife for fingerprinting was because "it's hard to get good prints off of blood," because the evidence explained why the police did not test the knife, and also, observing that the evidence did not relate to an essential element of the offenses charged "but rather was directed to the issue of the adequacy of the police investigation"), *cert. denied*, 393 Md. 477 (2006).

Furthermore, even to the extent that the evidence was marginal, that does not diminish the weight of its probative value. As this Court has explained:

> A solid and legitimate case for the prosecution is by no means required to be minimalist. Putting on a strong case is a virtue, not an abuse. In one sense, to be sure, any evidence beyond the satisfaction of the burden of production may not be strictly necessary. It may not be necessary, that is, to prevail on appeal if the issue is the legal sufficiency of the evidence. The additional evidence may, on the other hand, be quite necessary in order to persuade an unpredictable jury of legally untutored laymen to return a verdict of guilty unanimously and beyond a reasonable doubt. A minimalist case would run a dangerous risk of failing to do that.

Newman, 236 Md. App. at 554-55.

We also are not persuaded that the prejudice to Washington's case was "unfair." It has been said that "[p]robative value is outweighed by the danger of '*unfair*' prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case." *Odum v. State*, 412 Md. 593, 615

(2010) (quoting Murphy, *Maryland Criminal Evidence Handbook* § 506 (B) (3d ed. 1993 & Supp. 2007) (emphasis in original)). As this Court has reemphasized:

> Summarily, the nature of the evidence must be such that it generates such a strong emotional response from the jury such that the inflammatory nature of the evidence makes it unlikely for the jury to make a rational evaluation of the evidentiary weight. The inflammatory nature of the evidence must be such that the "shock value" on a layperson serving as a juror would prevent the proper evaluation or weight in context of the other evidence.

Urbanski v. State, 256 Md. App. 414, 434 (2022), *cert. denied*, 483 Md. 448 (2023).

The fact that "very few" murder weapons are ever recovered is not the type of evidence that either tends to provoke an emotional response or somehow injects sympathy into the case. *See Newman*, 236 Md. App. at 555 n. 7 ("In cases where the 'probative value' has only been outweighed slightly or to a modest extent instead of having been outweighed 'substantially,' the State's evidence would still be admissible. In sporting terms, the opponent of the relevant evidence must overcome a 'substantial' handicap"); *see generally Correll v. State*, 215 Md. App. 483, 501 (2013) (A "weapon's identity as a handgun can be established by testimony or by inference," as opposed to "tangible evidence in the form of the weapon") (citation omitted), *cert. denied*, 437 Md. 638 (2014). We again note that the claim of unfair prejudice is somewhat undercut by the acquittals on the greater offenses.

Moreover, even were we to conclude the court erred in admitting the testimonial evidence, we conclude its admission was harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (error will be harmless when reviewing court, upon independent review, is able to declare a belief beyond a reasonable doubt that there is no

reasonable possibility that the error contributed to the verdict). Returning to Washington's own summation of this case, "[t]he dispute was over who fired the guns." There was ample evidence that Washington was present at the scene of the shooting, that multiple guns were used in the shootout, and that he was, at minimum, an accomplice to the man wearing the white shirt seen on the surveillance video firing at the victims. As indicated in our prior discussion, this was sufficient, at minimum, to prove Washington's accomplice liability. We are satisfied that there was no reasonable possibility that the limited testimony that "very few" murder weapons are recovered contributed to the guilty verdicts in this case.

III.

Washington's last argument is that the court erred because his waiver of counsel at sentencing was not knowing and voluntary. The State responds that the court properly exercised its discretion. We concur.

The jury returned its verdicts on August 25, 2021. Sentencing occurred almost a year later, on June 15, 2022. At sentencing, the following ensued:

> THE COURT: Good morning, Counsel. Good morning, Mr. Washington. You can have a seat.
>
> MR. WASHINGTON: Good morning, Judge. Before we start, can I address the Court for a moment?
>
> THE COURT: Do you want to talk to your attorney first?
>
> MR. WASHINGTON: No.
>
> THE COURT: Okay.
>
> MR. WASHINGTON: My Counsel, has been ineffective and he's now fired.

THE COURT: Okay. You can represent yourself. Go ahead [STATE].

MR. WASHINGTON: Your Honor, I wish to get representation.

THE COURT: No. I'm not letting you fire Counsel the day of. I'm assuming for the sake of argument, you have a good reason to fire Counsel? I'm still not letting you replace counsel and postpone your sentencing right now. Do you want to go into your reasons as to why you feel he's ineffective?

The court's attention was then directed to an "Affidavit" Washington filed on his own behalf. As the court noted, nowhere in that document did Washington suggest that trial counsel was ineffective. The court then asked "in what way do you feel that your attorney was ineffective with regard to the sentencing proceeding that we haven't conducted yet?" The following transpired:

MR. WASHINGTON: My whole proceedings, period, up to my trial he was ineffective. He didn't file any documents that I advised him to file when I advised him to file it.

THE COURT: Give me an example. What didn't he file that you asked him to file?

MR. WASHINGTON: A Motion for Dismissal for fraud.

THE COURT: On what grounds?

MR. WASHINGTON: For fraud.

THE COURT: On what grounds?

MR. WASHINGTON: Fraudulent charges.

THE COURT: What grounds did you want him to file a Motion to Dismiss the charges against you?

MR. WASHINGTON: On the grounds of the Sixth Amendment that I had a right to face my accuser, on the grounds of the detective said that he

seen me walk up and shoot these individuals and then testified in front of a Grand Jury under the penalties of perjury that I didn't even have a gun. And [the Prosecutor] introduced the fraud evidence when she wrote a statement in response to the Motion I had to Suppress and says that I have a gun in my hand running up the street shooting at three victims.

THE COURT: Okay. Nothing that you're telling me is ineffective assistance of Counsel. It's you being upset and unhappy with the outcome of the proceedings, or even upset and unhappy with the decisions that I made, which that's what appeals are for. But nothing that you've described justifies discharging your attorney and certainly not on the day of the sentencing proceedings. You still wish to discharge your attorney?

MR. WASHINGTON: Well, for my benefit, he's been ineffective.

THE COURT: Okay. Again, I can't make you go through this proceeding with someone you don't want to represent you. What I'm saying is, I don't find that you have good cause to discharge him, which means I'm not going to postpone this proceeding. So you can either have him represent you now or you can represent yourself.

MR. WASHINGTON: You can proceed.

THE COURT: Okay. All right. Just to clarify, Madam State, -- well, you say "proceed." Are you proceedings [sic] with [Defense Counsel] as your attorney or are you representing yourself?

MR. WASHINGTON: For the record, he's fired. So you can proceed.

THE COURT: All right. Counsel?

[DEFENSE COUNSEL]: I'll defer to Your Honor. What would you like me to do? I can stay here to help him with documents. I can sit in the front row.

THE COURT: As a friend of the court, if you could sit tight for a few minutes, just in case, okay?

[DEFENSE COUNSEL]: Yes, sir.

THE COURT: All right. Thank you. …

Washington argued a motion for new trial on his own behalf, and that motion was denied. Washington then represented himself throughout the hearing. After sentencing, the court asked former defense counsel to advise Washington of his post-trial rights and counsel did.

The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *See Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963). A defendant in a criminal prosecution also has a constitutional right to have effective assistance of counsel and the corresponding right to reject that assistance and represent himself. *Powell v. Alabama*, 287 U.S. 45, 71 (1932) (recognition of the constitutional right to the effective assistance of counsel); *Dykes v. State*, 444 Md. 642, 648 (2015) (same).

When an accused foregoes the benefit of assistance of counsel, a waiver of the right must be knowing and intelligent to be effective. *See Brye v. State*, 410 Md. 623, 634-35 (2009) ("The accused 'should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."'") (quoting *Faretta v. California*, 422 U.S. 806, 835 (1975))); *see also Dykes*, 444 Md. at 648 ("A defendant may waive the right to counsel if the defendant does so knowingly and voluntarily"). Ordinarily, and as part of the implementation and protection of this fundamental right to counsel, our Supreme Court adopted Maryland Rule 4-215, "which explicates the method by which the right to counsel

may be waived by those defendants wishing to represent themselves . . . ." *Broadwater v. State*, 401 Md. 175, 180 (2007); *accord Dykes*, 444 Md. at 651.

Commendably, Washington's counsel recognizes that Maryland Rule 4-215 does not apply once "meaningful trial proceedings" have begun. *Marshall v. State*, 428 Md. 363, 372 (2012) (citing *State v. Hardy*, 415 Md. 612, 621 (2010), and *State v. Brown*, 342 Md. 404, 426 (1996)). In such a case, "the trial court has broad discretion...to determine whether dismissal of counsel is warranted." *State v. Brown*, 342 Md. at 428. However, "the court's discretion is not limitless. The court must conduct an inquiry to assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption. This inquiry must meet constitutional standards." *Id*. at 428-29 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938)). *See also State v. Hardy*, 415 Md. at 629 (reiterating the factors a court should consider and observing that these "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").

Here, after initially summarily rejecting Washington's request to discharge his attorney, the court asked Washington for his reasons. Washington did so and the court considered them but found them unmeritorious. Under the circumstances, we hold that the trial court properly exercised its discretion in considering Washington's request and permitting him to discharge his attorney and represent himself at sentencing.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY THE COSTS.

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I join Parts I and III of the Court's opinion in full. With respect to Part II, I would hold that the circuit court erred in overruling Mr. Washington's objection to Detective Riker's testimony that the police recover murder weapons in very few cases. In my view, that testimony was meant to vouch for the adequacy of the police's investigation, to offer a borderline expert opinion that the absence of a murder weapon shouldn't factor into the jury's conclusions. That said, I agree with my colleagues that the impact from this error didn't rise to the level of unfair prejudice and that the error ultimately was harmless. So although I don't agree with Part II in full, I concur in its conclusion and concur in the judgment.