Circuit Court for Montgomery County
Case No.: 136232C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 750

September Term, 2020

JERMO WATSON

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 29, 2021

*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.

Appellant, Jermo Watson, was indicted in the Circuit Court for Montgomery County, Maryland, and charged with multiple offenses, including attempted first degree murder, related to a home invasion in which five people were robbed and/or assaulted. Following a bench trial, appellant was convicted of three counts of armed robbery, four counts of first degree assault, one count of second degree assault, and one count of use of a firearm in a crime of violence. He was sentenced to an aggregate sentence of thirty (30) years, with credit for time served, to be followed by five years' supervised probation upon release. On this timely appeal, appellant asks us to consider the following:

> 1. Did the circuit court err, or abuse its discretion, in denying Mr. Watson's motion to discharge counsel?
>
> 2. Did the circuit court abuse its discretion in denying defense counsel's motion to postpone the trial?
>
> 3. Did the circuit court err in accepting Mr. Watson's waiver of his right to a jury trial?
>
> 4. Is the evidence sufficient to sustain the convictions?

For the following reasons, we shall affirm.

BACKGROUND

On February 9, 2018, sometime after midnight, Jesse Chopak, Tristan Ward, Kendall Ponds, Sean Royster, and Malik Jefferson Smith were recording a song inside a makeshift recording studio located in a house at 17619 Lindstrom Court in Gaithersburg, Maryland. At one point, Ward left the recording session to make a cash withdrawal from a nearby bank. When he returned, he "got ran up on." Three to four masked men appeared near the front of the house and demanded entry to the building. Several of them were

armed with pistols. When Ward initially stated he did not have a key to get back inside, someone punched him in the face and broke his nose. Thereafter, someone opened the door, and Ward was ordered inside at gunpoint. He was taken to the downstairs area and told to "empty boxes, empty everything out."

Meanwhile, several of the armed masked men proceeded upstairs to the recording studio and demanded money and wallets from Chopak, Ponds, Royster, and Smith. Chopak testified that they "told us that they weren't messing around" and that he and his companions should "get on the ground and empty our pockets." Ponds, Royster and Chopak confirmed that they were robbed of their property at gunpoint.

Throughout the ordeal, the assailants fired off random rounds from their handguns as a form of intimidation. Ponds realized later that he sustained a grazing wound to his right leg as a result of this random gunfire. Chopak also was shot during the incident. Specifically, after everyone else was led out of the studio, Chopak was ordered to pick up IDs and other items that lay scattered about the room after everyone was told to produce their wallets. Chopak testified that, "I guess I wasn't doing it fast enough, so they said hurry up, and then that's when I got shot in both of my legs." Shortly thereafter, all of the masked assailants fled the scene.

Once the men left, Chopak went downstairs, bleeding from the legs and asking for help. Seeing that Chopak was shot, the group transported him to Shady Grove Hospital for treatment. Chopak was eventually medevacked to Shock Trauma due to the severity of his injuries. None of the victims were able to identify any of the assailants as they wore masks and gloves.

As part of the investigation, police recovered shell casings and a fired bullet from inside the residence. The firearms examiner testified that the casings were both fired from the same .45 caliber semi-automatic pistol. And the recovered .45 caliber bullet matched another .45 caliber bullet retrieved from Chopak following his medical treatment for the gunshot to his legs. No guns were recovered in this case.

Police forensic scientists recovered approximately five "torn-up pieces of blue material that appeared to be from disposable or latex gloves" in front of the residence near the mailbox. Two other torn pieces from blue latex gloves were also found inside the residence. Swabs were collected from the interior and exterior of the glove fragments. It was determined that appellant was the major contributor to the DNA recovered from the scrap of blue latex glove recovered outside near the mailbox. The probability of selecting an unrelated individual was estimated to be 1 in 60 sextillion.

On May 21, 2019, Detective Brian Dyer, the lead detective in this investigation, met with appellant after the DNA results identified him as a possible suspect. Appellant was advised of and waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and then admitted that he "got caught up in" a home invasion several months earlier.[1] He was informed that his DNA was found near the scene, on remnants of a blue latex glove. Appellant stated that he sometimes wore gloves to bag marijuana. Told that he was being charged with "everything" related to the home invasion, including the fact that someone

[1] Appellant's recorded interview was played for the court. A transcript is also included with the record on appeal.

was shot, appellant initially denied being involved. The detective continued by telling appellant that the police knew other individuals were involved, but that appellant was the only one identified by his DNA.

Appellant thereafter agreed that he had heard about some robberies, and that he knew some acquaintances had robbed a studio in Gaithersburg of about "20, 30 pounds of weed[.]" Appellant denied knowing the shooting victim in this case, Mr. Chopak. But, after again being confronted with the fact that his DNA was found at the scene, appellant stated that he "might as well just eat" all the charges. Appellant then asked several times to talk to a State's Attorney because he wanted "some type of security for my family, because it's that serious."

The remainder of appellant's statement was primarily a back and forth between appellant and the detective concerning, if appellant told the detective what he knew, whether the detective or the State's Attorney could grant him some type of immunity in exchange.[2] Although Detective Dyer repeatedly informed appellant that he could not make any promises, appellant nevertheless admitted "[y]eah, I heard, and I pretty much, I know what was going on. It's just wow. That's all I can say right now." After he was informed of the charges, including attempted first degree murder, appellant stated "I don't want to even talk until I know something is guaranteed. Like this is what we can do, we can get you out, we can this, and that, and that, and that."

[2] There is no claim concerning the voluntariness of appellant's statement in this case.

Appellant continued that he knew that "there was a rack of weed taken out of that house" and "[i]t wasn't just a robbery[.]" Wondering whether he put himself "in a fucked up situation," appellant persisted in seeking a deal with the detective, stating that "I won't bullshit you. You're going to find out the truth. I just want to make sure when I tell you the truth that there's something promised for me . . ." Asked whether he knew who the shooter was, appellant replied, "I know a lot of stuff."[3]

Indicating that there were four other people involved, appellant again stated that there was "a rack of fucking weed in the house" and that "when I say a lot, I mean a lot. He had a lot." He maintained that he was "in the wrong place at the wrong time" and that "I should have never been with these guys."

Ultimately, appellant believed he was "tricked into the whole situation." He could not sleep afterwards, nor did he go out, indicating that "I didn't know what happened to the person" and that he "didn't know if they died." Further, appellant stated that the incident was "haunting" him and he was glad he was "being confronted about it." He maintained that he had a "conscience" and was a "good person" and that he "let some fucking, some young kids manipulize [sic] me[.]"

Appellant continued to attempt to strike a deal, telling Detective Dyer that he could tell him who "master minded it, down to the person who went in the house, down to the

[3] Detective Dyer testified on cross-examination that he knew, through his investigation, that Khari Harper, a.k.a. "Mars," was the shooter. He also testified that he knew that four other individuals, known by the nicknames, "Nel, Ace, Mars and Foolie" were involved in the home invasion. Appellant was known as "Twin." Appellant admitted that he knew all four of these individuals.

person who shot the person, and the other little, the other shit that happened." If he provided that information, appellant continued, he wanted to know "what you can do for me" to which the detective replied that he could not tell him "how this is going to do down[.]" Appellant also stated "I know exactly what happened" but was worried about "snitching." He concluded that "I shouldn't have been there, and this shouldn't have happened, this shouldn't have happened, and this shouldn't have happened. And then I'm like I fucking let some fucking little kids manipulate me, and that just makes me even more madder."

Following Detective Dyer's testimony and the playing of appellant's statement for the court, appellant testified on his own behalf. Appellant explained that he had been to the house on Lindstrom Court on approximately ten (10) prior occasions to purchase marijuana. Appellant testified that, when he went there, the marijuana was displayed for purchase by "Jacob," and he, appellant, would wear blue latex gloves in order to handle the product and to protect himself from fentanyl, which was sometimes mixed with the marijuana.

On one occasion, appellant told his friend, known only as "Foolie" in this case, that he bought marijuana from Jacob. Following this, appellant learned that Foolie robbed Jacob when he, appellant, overheard a conversation between Foolie and an unidentified individual wherein Foolie stated, "No refunds on robberies." Moreover, Foolie told appellant that he was involved in a home invasion where someone was shot.

With respect to his statement to Detective Dyer, appellant indicated the reason he stated he felt "manipulated" was because he thought Foolie was trying to get information

from him about Jacob's marijuana operation. He testified that he had trouble sleeping because he imagined his sons being shot under circumstances similar to that described by Foolie. As for knowing everyone's role, appellant testified that he told the detective this because he thought he could then go and learn those roles from Foolie, after providing the statement.

Appellant concluded his testimony on direct examination by denying that he planned the home invasion in this case. He denied telling Foolie where the drugs were located in the house. And he denied going into the house whatsoever during the home invasion.

On cross-examination, appellant first confirmed that he had prior convictions for fraud to avoid prosecution and criminal impersonation with an attempt to defraud. As for this incident, appellant testified that he only learned about the robbery two days after it occurred. He learned about the shooting two to three weeks after that. Appellant stated that he never went to the house with Foolie or any other individuals previously identified by nickname and believed to be involved in the home invasion by police.

Asked additional questions about when he learned about the shooting, appellant testified that Foolie told him about it, and, in addition, he learned that police had collected DNA evidence and were executing search warrants in connection to a shooting inside a studio located in a residence in Gaithersburg. Appellant agreed that he thought that the person who was shot was his supplier, Jacob. Appellant also testified at trial that he did not know who the shooter was, or what was taken during the robbery, but assumed it was marijuana, a laptop, and some cellphones.

Appellant admitted he was inside the residence in question two days before the robbery. He was wearing gloves because he believed there might be fentanyl on the marijuana. He also testified that he had been at the location once every two weeks prior. But, he agreed that he never told Detective Dyer that he bought marijuana at this residence. He also maintained that he told Detective Dyer that he was inside the house two days before the robbery, testifying that "I told him that for sure."

The prosecutor then inquired about appellant's repeated requests for immunity during his interview with police. He agreed that he spoke to the State's Attorney after that interview and made a proffer. In that proffer, appellant stated that he was in the house, not two days before the robbery, which occurred during the early morning hours of February 9, 2018, but either in September or December of the prior year. Continuing to deny that he was at the location on the night in question, appellant was asked why he sought immunity if he was not involved. Appellant testified "[b]ecause I didn't want to involve myself in that situation, so, I wanted to talk to him so I could make sure nothing comes to me." He maintained that the reason he thought he was "fucked" was because his DNA was found at the scene.

After hearing argument, the court found as follows, in pertinent part:

> First, let me comment on his statement to Detective Dyer and his testimony. Through his trial testimony, he admitted to having been to the house prior to the robbery, to knowing about the marijuana that was being kept there. In fact, he testified to having bought marijuana from Jacob at the residence and admitted to passing this information along to Foolie.
>
> He admitted to using blue latex gloves like the one recovered outside of the house, although, his explanation yesterday for using them was much different from the explanation he gave to Detective Dyer. In his statement to

> Detective Dyer, he made direct admissions about being there on the night in question after first denying knowledge of the incident. He stated that he should not have been there, that he was manipulated by the younger guys. He stated that he had genuine concern since that night to not sleeping since that night, not knowing what happened to the victim who was shot, whether he lived or died.
>
> So, contrary to defendant's testimony yesterday, I do find that he was there that night. I further find that based on the testimony yesterday, he was familiar with the house, that he was familiar with the fact that substantial quantities of marijuana were being distributed from the house. A reasonable inference from the evidence and in particular from defendant's own statements, is that the defendant was the one who brought the house and the drugs being sold from the house to the attention of Foolie and the gang and the defendant was one of the participants in the entire incident.
>
> I do not accept the defendant's explanation from yesterday of how he learned that there was a shotgun victim. Rather, I believe the statement he made to Detective Dyer that he was concerned ever since that night about the condition of the victim, what happened to him and whether he lived or died, the defendant was concerned that he hadn't been to sleep since. It's strange [sic] credulity to think that the defendant would have had such concern if he had simply heard about something happening as a result of an incident that he had nothing to do with other than telling Foolie about the opportunity on Lindstrom Court.

The court then ruled that the evidence was sufficient to establish, beyond a reasonable doubt, that "the defendant was there on February 9th, 2018, that he was one of the participants in the home invasion, robbery and assaults that occurred, whether as a principal in the first degree or as an accomplice." Accordingly, appellant was convicted of use of a firearm in the commission of a crime of violence, armed robbery of Jesse Chopak, Sean Royster, and Kendall Pons, first degree assault of Chopak, Royster, Pons, and Malik Jefferson, and second degree assault of Tristan Ward. We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first challenges the court's rulings on his written "Motion to Replace Counsel." Appellant contends that the court did not adequately inquire of him personally when appellant requested to discharge counsel and that the court erred by not explicitly ruling that the reason for wanting to discharge his attorney was without merit. The State responds that the court addressed and considered appellant's reasons for wanting to fire his attorney as indicated in his written motion, and as supplemented by further information from defense counsel and the prosecutor in open court. The State further asserts that the court did make a proper determination, albeit implicitly, that the motion was without merit.

Prior to trial, appellant filed a handwritten Motion to Replace Counsel, which stated as follows:

> 1. Your Honor, I am having serious problems communicating with my Attorney and he is not allowing me to receive all of the information on my case. I asked for a copy of my discovery and he never gave me a copy.
>
> 2. Your Honor, I was scheduled to be at my Motion hearing this week and [Defense Counsel] did not make sure I was present.
>
> 3. Your Honor, I told [Defense Counsel] specifically to only discuss my case with me, he told me that he discussed certain thing [sic] about my case with the State's Attorney's Office that I told him not to discuss. Your Honor, he has been very unprofessional.
>
> 4. Your Honor, I am humbly and respectfully requesting to have [Defense Counsel] removed from my case and replaced with a new counsel from your Public Defenders Office.

The court conducted a hearing prior to trial on appellant's motion. At that time, the court asked appellant personally "is there anything you want to tell me . . . without

disclosing any confidences that you might have with [Defense Counsel]?" Appellant responded that "I just don't – I just don't feel like I'm being treated comfortable, I mean fair." After this, the court asked defense counsel to respond, as follows:

> THE COURT: Well, [Defense Counsel], do you have anything you want to say about this?
>
> [DEFENSE COUNSEL]: You know, I could address each of these points, one, in particular, about not showing up on the motions date. I actually had that on my calendar. I actually checked with – I didn't realize that it wasn't set until I went down to go try to speak with him in the sheriff's office. I actually went into your chambers and spoke with your aide actually trying to figure out why it wasn't set. And we looked on case search. It was set on case search. Don't understand why it wasn't actually in court.
>
> THE COURT: All right.
>
> [DEFENSE COUNSEL]: I did provide paper discovery, and there were some additional items that I was actually planning on meeting with Mr. Watson about within, I guess, the pods, or within the jail itself, because I'm not allowed to bring a computer in without the permission of the warden or the assistant warden. And I was actually in my car about to go over there when I got this e-mail from the Court.
>
> THE COURT: All right.
>
> The court then heard from the State, and the following ensued:
>
> [PROSECUTOR]: I mean I would ask the Court to re-advise him sort of as a 4-215 situation of his right to counsel. It's his right to have counsel. It's also his right to not have counsel and represent himself, but I think that, obviously, Your Honor needs to let him know that that right does not extend to counsel of –
>
> THE COURT: Right.
>
> [PROSECUTOR]: -- his choosing. The Office of the Public Defender has made it clear over and over in this courthouse that terminating counsel for a reason like this would result in him representing himself; that it's not going to be – you know, obviously, I think Your Honor started talking about what his options are, and he's entitled, from our perspective, to represent himself or to continue to have [Defense Counsel] represent him.

Immediately following this, defense counsel added:

> [DEFENSE COUNSEL]: And if I could just add, Your Honor, my guess is this stems from a conversation that myself and Mr. Watson had. He's actually housed over at Seven Locks over at MCDC, and my guess is this stems from that conversation given how that conversation went.
>
> The concern that I have is there's a lack of trust factor, I think, that's going on.
>
> And I don't think you'd disagree with me on that one, Mr. Watson.
>
> If Your Honor does decide to keep me in the case, I would ask for a continuance, though. I could try to rebuild that trust and/or go through everything that he want –
>
> THE COURT: All right.
>
> [DEFENSE COUNSEL]: -- anything additional that he would want to see.

At this point, the State interjected that it did not believe defense counsel had been ineffective and that "[w]e've been in constant communication with [Defense Counsel] from early on in this case. He's been advocating on behalf of Mr. Watson. We don't see any issues as far as him being deficient." The State also noted that there had been discussions about discovery and resolving the case, including trial issues and motions in limine, and that it was the State's opinion that defense counsel had "been working diligently on behalf of Mr. Watson." The State also indicated that defense counsel "is well-respected in this courthouse," had been in practice for years, and that "the bench, his colleagues, the State's Attorney's Office all know him to be competent, and appropriate counsel, and we have seen that in this case, as well."

Considering all this, the court then addressed appellant on the record as follows:

> THE COURT: So, Mr. Watson, the choices for you right now –

MR. WATSON: Uh-huh.

THE COURT: -- and I went back and I looked at a couple of cases on this before I came out here, and you do have a Sixth Amendment right to counsel, and if it's counsel that you are going to individually retain, then you have a right to counsel of your choosing. You have a right to be represented by the office of the Public Defender, but you do not, under that circumstance, have a right to determine who from the Office of the Public Defender will represent you.

So, from my perspective right now, I think your choice is that you can either keep [Defense Counsel] as your counsel, or if you would prefer to proceed without counsel that's always an option that's available to you, but if you are interested in that, as an option, then I'll go through another inquiry to be sure that you understand the consequences of that, and that you're making that decision freely and voluntarily.

MR. WATSON: Yes, sir.

THE COURT: All right. Is that something that you're interested in doing?

MR. WATSON: I'm just trying to figure out why do I have a panel lawyer in the beginning, sir.

THE COURT: I'm sorry?

MR. WATSON: Why do I have a panel lawyer is I'm the only charged in this case? If it's a conflict of interest in the beginning of my case, then I still, like I don't understand why do I even have a panel lawyer, which is no, nothing, nothing about [Defense Counsel], but why do I have a panel lawyer in this case if I'm the only one charged?

THE COURT: Well, I think there were some potential – just from my own knowledge of at least one of the victims in this case, or one of the alleged victims in this case –

MR. WATSON: Uh-huh.

THE COURT: -- I think that that in itself could, perhaps, have created a conflict with respect to the Public Defender's Office, and their decision to panel off the case. I have no involvement in that decision in terms of how the Public Defender's Office deals with those issues. They're certainly well-versed in these issues, and, you know, if they believed it was necessary for

> whatever reason to panel the case out, then that's a decision that the Public Defender's Office makes; it's not something that I have any control over.
>
> So, I don't detect that you have an interest in proceeding without counsel, is that right?
>
> MR. WATSON: Yes.
>
> THE COURT: All right. Yes, that's correct, you do not have that interest? In other words, you want to keep counsel in the case?
>
> MR. WATSON: Yeah, I have no choice.
>
> THE COURT: All right. All right. . . . [4]

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).[5] "If the defendant cannot afford private representation, then he or she is entitled to an effective defense from a public defender or court appointed attorney." *Gonzales v. State*, 408 Md. 515, 529-30 (2009); *see also Dykes v. State*, 444 Md. 642, 648 (2015) ("[T]he defendant has a right to counsel appointed at government expense") (citing *Gideon, supra*).

As part of the implementation and protection of this fundamental right to counsel, the Court of Appeals adopted Maryland Rule 4-215, "which explicates the method by which the right to counsel may be waived by those defendants wishing to represent

[4] The court then proceeded to consider defense counsel's request for a continuance, and we shall discuss that in more detail in the next question presented.

[5] The right to counsel provisions of the Maryland Declaration of Rights, Article 21 are in *pari materia* with the Sixth Amendment to the federal constitution. *Parren v. State*, 309 Md. 260, 262-63 n.1 (1987).

themselves . . . ." *Broadwater v. State*, 401 Md. 175, 180 (2007); *accord Dykes*, 444 Md. at 651. The requirements of the Rule are "mandatory," require "strict compliance," and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012) (citations omitted). "We review *de novo* whether the circuit court complied with Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012); *accord State v. Weddington*, 457 Md. 589, 598-99 (2018). However, so long as the court has strictly complied with Rule 4-215 (e), we review the court's decision regarding whether to grant or deny a defendant's request to discharge counsel for abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013). 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 (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 574 U.S. 911 (2014).

Maryland Rule 4-215 (e), provides:

> 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 has established the following three steps for a court to follow when a defendant seeks to discharge counsel before trial:

> (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, 444 Md. at 652 (internal citations omitted).

There is no dispute that the court considered appellant's request in this case. Instead, appellant's arguments are that the court did not adequately inquire of him personally and did not explicitly rule that his reason was without merit. Our review of the record, including appellant's written request and the colloquy between appellant, the prosecutor, defense counsel, and the court, persuades us otherwise. The court complied with Rule 4-215 (e) by considering his reasons for wanting to discharge counsel. As for the fact that the court did not expressly state that his reason was unmeritorious, we note that the rule does not include any provision that the court must state, on the record, that the reasons are

without merit. We conclude that the court's finding was implicit in the exchange and that the court properly exercised its discretion in considering appellant's request.

II.

Next, appellant asserts that the court abused its discretion in not granting his request for postponement based on the "lack of trust" between appellant and counsel, as evidenced by the aforementioned request to discharge counsel. We disagree.

Here, after appellant indicated that he wanted to proceed with his assigned defense counsel, the court turned to the request for a continuance. The State indicated that it opposed a continuance as it was prepared for trial. Defense counsel then argued:

> [DEFENSE COUNSEL]: Just as a follow-up, Your Honor. Just how our conversation went, and this is going back probably two weeks now, it was clear to me that there was a lack of trust, and I'm trying to do this without divulging anything. There was was [sic] concern that I wasn't getting all the information from Mr. Watson in order to be able to provide an appropriate defense for him.
>
> I would like to try to build up – Mr. Watson and I have met on numerous occasions. I'd like to try to build up that trust again. My problem is I would be going forward next week not knowing what my client –
>
> THE COURT: Well, here's the practical side of this from the standpoint of scheduling. I would not be inclined to continue the case. However, I also need to let everyone know that I have another case that's supposed to go to trial that looks like it is going to trial that's going to take up just about the whole week next week. So, whether there's another judge that's going to be available to hear the case on Monday, I don't know.

After confirming that the *Hicks* date was not for another two months, defense counsel continued that appellant had given a statement to the police and that it was

counsel's opinion that there were no issues with respect to that statement.[6] Counsel also informed the court as follows:

> [DEFENSE COUNSEL]: As I mentioned, Your Honor, Mr. Watson and I are – I'll continue to work with him, but this is – although it's not, I think and [the Prosecutor] and I have talked about this, the most complicated case in the world, it's still a lot of stuff for someone to go through. I don't want to give this just back to the Public Defender, especially when we've got a trial set up for next week.
>
> I do, however, – Mr. Watson and I have worked together actually on a – I got paneled out in another case in the sentencing phase and worked together on this. I would like to be, if given the opportunity to work with him, I just don't know if that trust is going to be built up with the next eight days, Your Honor.

After the court inquired and learned that there had been no issues with respect to discovery in this case, the court denied the request for postponement:

> THE COURT: All right.
>
> All right. [Defense Counsel], I'm going to deny the request for a continuance at this time. The case will be ready to go next week, and, hopefully, the schedule will work out that I'll be able to hear the case, but, if not, hopefully, there'll be another judge available to hear it. All right.

"Generally, an appellate court will not disturb a ruling on a motion to continue unless [discretion is] arbitrarily or prejudicially exercised." *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (internal quotation marks and citation omitted). As, the Supreme Court has explained:

> Not every restriction on counsel's time or opportunity to investigate or to consult with his client or otherwise to prepare for trial violates a defendant's Sixth Amendment right to counsel. *See Chambers v. Maroney*, 399 U.S. 42, 53-54 (1970). Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of

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[6] *State v. Hicks*, 285 Md. 310 (1979); *see also* Md. Rule 4-271.

> assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning and arbitrary "insistence upon expeditiousness in the face of a justifiable request for delay" violates the right to the assistance of counsel. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964).

Morris v. Slappy, 461 U.S. 1, 11-12 (1983).

Here, the request came shortly before a trial involving multiple witnesses and victims, some of whom testified concerning DNA evidence. There was no indication that defense counsel was unprepared for trial itself, especially considering that the request was primarily for purposes of rebuilding trust between attorney and client following the request to discharge counsel. We are not persuaded that there was a compelling reason requiring a postponement under the circumstances and, in any event, the trial court did not abuse its discretion in denying the request.

III.

Appellant's third issue presented is whether reversal is required because the court did not determine and announce on the record that his decision to waive a jury trial was made knowingly. Appellant also observes that, during the pertinent colloquy, the court: did not inform him of the jury selection process and its details; did not inform him of the process if the jury was unable to reach a unanimous verdict; and, did not inquire about his drug and alcohol use and whether anyone had made any promises or inducements, or applied coercion or threats to have him relinquish his right to a jury trial.

The State responds that appellant failed to preserve this claim because defense counsel was required to contemporaneously object to the court's failure to say that the

waiver was made knowingly. On the merits, the State responds that defense counsel represented to the court that these issues were explained to appellant and that the colloquy between appellant and the court was adequate.

Here, approximately four days prior to trial, appellant filed a "Notice of Request for a Bench Trial." In that request, the appellant, through counsel, averred that:

> Counsel has explained to the Defendant that he has a constitutional right to be tried by a jury, has thoroughly explained the differences between a bench trial and a jury trial, and has explained the process by which a jury is selected, its role in hearing the evidence, their deliberation, and the need for a unanimous verdict. Furthermore, Counsel has advised the Defendant to have a jury trial.

Despite this advisement, appellant informed counsel that he wanted to be tried by the court. Accordingly, pursuant to appellant's choice, on the first day scheduled for trial, defense counsel informed the court of these advisements stating, "I believe that I did explain everything to him," but that counsel believed additional advisement should come from the court. Accordingly, the court inquired further as to this request:

> THE COURT: Yes. All right.
>
> And, Mr. Watson, good morning.
>
> MR. WATSON: Good morning, sir.
>
> THE COURT: All right. And you've heard what [Defense Counsel] has said here this morning, and you've had a chance to review this issue with your right to a jury trial. You have a right to a jury trial in this case, and you understand that before you can be convicted in a jury trial, or found guilty in a jury trial, all 12 jurors would have to be unanimous in their decision, and all 12 would have to agree on your guilt beyond a reasonable doubt. And is it your desire to waive a jury trial?
>
> MR. WATSON: Yes, sir.

> THE COURT: All right. And you feel like you've had enough of a chance to discuss this with [Defense Counsel]?
>
> MR. WATSON: Right.
>
> THE COURT: All right. And you're making that decision freely and voluntarily?
>
> MR. WATSON: Yes, sir.
>
> THE COURT: All right. Thank you.
>
> All right. I will find that Mr. Watson has freely and voluntarily waived his right to a jury trial, and has elected to be tried before the Court.

An accused's right to a trial by jury is guaranteed by the Sixth Amendment to the United States Constitution. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968); *Boulden v. State*, 414 Md. 284, 294 (2010). Similar protection is given criminal defendants under Articles 5(a)(1) and 21 of the Maryland Declaration of Rights. *Owens v. State*, 399 Md. 388, 405-06 (2007), *cert. denied*, 552 U.S. 1144 (2008). Because the right to a jury trial is "absolute," *Robinson v. State*, 410 Md. 91, 107 (2009), the right can only be waived if the trial court is "satisfied that there has been an intentional relinquishment or abandonment" of that right. *Powell v. State*, 394 Md. 632, 639 (2006) (quotation marks and citation omitted), *cert. denied*, 549 U.S. 1222 (2007). Whether an accused has made an intelligent and knowing waiver of the right to a jury trial depends on the facts and circumstances of each case. *Walker v. State*, 406 Md. 369, 380 (2008) (quotation marks and citations omitted). In making a determination that a defendant has made a knowing waiver of their right to a jury trial, the "'ultimate inquiry'" is "'whether there has been an intentional relinquishment or abandonment of a known right or privilege.'" *Winters v. State*, 434 Md. 527, 537 (2013) (quoting *Boulden*, 414 Md. at 295). Pertinent to this discussion, the

Maryland Rules provide as follows in Rule 4-246:

> (a) Generally. In the circuit court, a defendant having a right to trial by jury shall be tried by a jury unless the right is waived pursuant to section (b) of this Rule. The State does not have the right to elect a trial by jury.
>
> (b) Procedure for Acceptance of Waiver. A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.

As the Court of Appeals has explained, Rule 4-246(b) "very clearly sets out a two-step procedure: (1) 'an examination of the defendant on the record in open court,' commonly referred to as the 'waiver colloquy,' and (2) 'the court['s] determin[ation] and announce[ment] on the record that the waiver is made knowingly and voluntarily,' which we refer to as the 'determination and announcement requirement.'" *Nalls v. State*, 437 Md. 674, 687 (2014) (citing Md. Rule 4-246(b)) (alteration in original). "The Rule contemplates full compliance with both steps of the waiver procedure." *Id*. Failure to comply fully with the Rule is a reversible error. *Szwed v. State*, 438 Md. 1, 5 (2014).

That said, the Court has made clear "that a claimed failure of the court to adhere strictly with the requirements of Rule 4-246(b) requires a contemporaneous objection in order to be challenged on appeal." *Spence v. State*, 444 Md. 1, 14-15 (2015) (citing *Nalls*, 437 Md. at 693); *accord Szwed*, 438 Md. at 5 (citing *Nalls*, 437 Md. at 693); *Meredith v. State*, 217 Md. App. 669, 674 (2014) (citing *Nalls*, 437 Md. at 693).

Here, appellant did not object to the court's failure to announce that his waiver of a jury trial was made knowingly. Therefore, we hold that the issue was unpreserved.

Moreover, even if preserved, we are satisfied that the court's inquiry, considered along with the representations of counsel, was adequate to establish that appellant's waiver of his right to a jury trial was made knowingly and voluntarily. *See Abeokuto v. State*, 391 Md. 289, 317 (2006) (observing that the examiner may be the court, the prosecutor, and/or defense counsel and that there is no requirement for "any fixed incantation"); *see generally, Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 643 (1997) (recognizing that lawyers, as officers of the court, "occupy a position of trust and our legal system relies in significant measure on that trust . . . counsel's word is counsel's bond unless there is something to the contrary that the opponent can bring in").

IV.

Finally, appellant challenges the evidence pointing to his criminal agency. Specifically, appellant avers that the evidence was insufficient to establish that he was an accomplice to the underlying crimes. The State disagrees, responding that the court, as the finder of fact, could infer his identity from the DNA evidence, as well as knowledge and consciousness of guilt from appellant's statement to the police.

"The sufficiency of the evidence is viewed in the light most favorable to the prosecution." *State v. Morrison*, 470 Md. 86, 105 (2020). Accordingly, "we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Wilson*, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017)). Moreover, this Court "does not 're-weigh' the credibility of witnesses or attempt to resolve any conflicts in the evidence," *Morrison*, 470 Md. at 105 (quoting *Fuentes*, 454 Md. at 307-08), but rather, we

"assess 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged[.]'" *Id*. at 105 (quoting *White v. State*, 363 Md. 150, 162 (2001)). "Although circumstantial evidence alone is sufficient to support a conviction, 'the inferences . . . must rest on more than mere speculation or conjecture.'" *Id*. at 106 (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

Pertinent to this case, a person who did not personally commit a crime, but aided another in the crime, may be found guilty to the same extent as the other person. *Kohler v. State*, 203 Md. App. 110, 119 (2012) (citation omitted). "Whereas principals in the first degree 'commit the deed as perpetrating actors, either by their own hand or by the hand of an innocent agent,' principals in the second degree are 'present, actually or constructively, aiding and abetting the commission of the crime, but not themselves committing it.'" *Id*. (quoting *Handy v. State*, 23 Md. App. 239, 251 (1974)). *Accord Silva v. State*, 422 Md. 17, 28 (2011). Also pertinent is the general rule that "'knowledge may be proven by circumstantial evidence and by inferences drawn therefrom.'" *Smith*, 415 Md. at 187 (quoting *Dawkins v. State*, 313 Md. 638, 651 (1988)). Moreover, "[a] person's post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind." *Thomas v. State*, 372 Md. 342, 352 (2002).

Here, a rational finder of fact could conclude that appellant was at the scene of the home invasion on the night in question, given that there was DNA evidence, consistent with his profile, found outside the residence on a remnant of a blue latex glove. During his interview, appellant admitted, without prodding as to the color of the gloves found at the

scene, that he used blue latex gloves on prior occasions. He also admitted, during trial testimony, that he was present at the scene two days prior to the underlying incident.

In addition, appellant told Detective Dyer that: he knew the "situation" was "fucked up"; he was at the "wrong place at the wrong time"; he "should have never been with these guys"; he knew about the large amount of marijuana at the subject location; it was not "just a robbery"; he was "tricked" into helping his companions; and, that he could not sleep thereafter and was haunted about the events that transpired, including whether someone died as a result of the shooting. He also repeatedly attempted to strike a deal to receive some form of immunity from prosecution in return for telling the detective all he knew. Indeed, appellant stated "I know exactly what happened" but was worried about "snitching." We are persuaded that the circumstantial evidence, as well as the rational inferences derived therefrom, supported the trial court's findings in this case. Thus, we hold that the evidence was sufficient to support the court's verdicts.

JUDGMENTS AFFIRMED.

COSTS TO BE ASSESSED TO APPELLANT.