Circuit Court for Howard County
Case No. 13-K-16-057110

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 785

September Term, 2023

CRAIG DENNIS WHITE

v.

STATE OF MARYLAND

Graeff,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: September 24, 2025

In 2017, a jury in the Circuit Court for Howard County found Craig Dennis White, the appellant, guilty of the first-degree murders of his parents, Glenn and Linda White. On appeal, the judgments were vacated for errors relating to Rule 4-215(e) and the prosecutor's reference, in closing argument, to the appellant's failure to testify. *White v. State*, No. 2292, Sept. Term, 2017, slip op. at 1 (filed Mar. 27, 2020) ("*White I*"). The case was remanded for further proceedings.

A retrial took place in December 2022. In his first trial, the appellant had been represented by lawyers from the Office of the Public Defender ("OPD"). This time, he represented himself. Once again a jury found him guilty of two counts of murder in the first degree. After the court imposed consecutive terms of life imprisonment without the possibility of parole, the appellant noted this appeal, raising the following questions, which we have rephrased slightly:

I. Did the trial court err by violating Rules 4-214 and 4-215, and by denying his related motion to postpone?

II. Did the trial court err by ruling that he voluntarily absented himself from trial on December 16, 2022?

III. Did the trial court err by allowing the State to impeach him with evidence of his prior conviction?

IV. Did the trial court err by permitting a juror to sit who expressed a legally erroneous view of the role of the jury?

Finding no reversible error, we shall affirm the judgments.

FACTS AND PROCEEDINGS

When Savannah Bentley, the appellant's former girlfriend, accused him of raping her, his parents hired attorney Debra A. Saltz to investigate. Ms. Saltz concluded that Ms.

Bentley's allegations were part of an attempt to extort money. Ms. Saltz arranged a meeting to discuss her findings with the appellant and a police detective for September 1, 2016. When the appellant did not appear, Ms. Saltz tried to contact both Glenn and Linda White repeatedly, without success. She asked the police to conduct a welfare check at their home in Howard County.

The police arrived at the Whites' home to find they had been brutally murdered. Mr. White had sustained forty-two stab wounds and thirty-two cutting wounds. A single-edged knife blade, broken from its handle, was recovered from a wound in his neck and a blood-soaked knife handle was found next to his body. Mrs. White had been strangled to death. The appellant's blood and DNA were present at the murder scene.

The appellant pleaded not criminally responsible ("NCR"). He did not testify during the guilt phase of his first trial, but elected to testify during the criminal responsibility phase. He admitted killing his parents.

The second trial lasted eight days. The State presented overwhelming evidence of the appellant's guilt, including his prior testimony admitting that he had killed his parents. The appellant's theory of defense was that Ms. Bentley and people associated with her had committed the murders. The jurors deliberated two and a half hours and returned verdicts of guilt on two counts of first-degree murder.

In our discussion, we shall set forth additional facts pertinent to the issues the appellant has raised on appeal.

DISCUSSION

I.

During pretrial hearings leading up to his second trial, the appellant repeatedly complained and, in the words of his brief, "expressed reservations" about his representation by OPD attorneys. His complaints began at a scheduling conference, held virtually, in November 2020, at which he told the court he planned to represent himself at his retrial.[1] The court replied in part:

> So this is what I'm thinking, and I'll hear from the lawyers, is to set this in for an in-person hearing in about three weeks and you can then meet with either [OPD attorney 1] and/or [OPD attorney 2]. You can have your discussions. If you still wish to, I guess, release them as your attorneys, I still have to give you an advice of rights and give you additional information. But since this case is being retried in August, that will give you an opportunity to have discussions with [OPD attorney 2] or [OPD attorney 1] or any other lawyer, but I still have to give you a formal advice. That's what I'm thinking about doing.

The court then scheduled an in-person status hearing for December 2, 2020, which for various reasons was postponed twice, until March 3, 2021.

The appellant appeared in court on March 3, 2021, accompanied by the three OPD attorneys who were his counsel of record. He told the court, "I don't want to talk until I have a paid lawyer present." The court replied:

> Okay. Mr. White, we're going to have to go through a whole list of questions because when we were here before on video you indicated you wanted to discharge the attorney. But I still have to ask you a whole list of questions in order to determine if I'm going to allow that.

[1] The appellant also moved to postpone the retrial for three years, until he finished serving his sentence for solicitation to intimidate a juror. The motion was denied.

The appellant was sworn in, and the court conducted a Rule 4-215 inquiry:

> THE COURT: . . . So let me ask, I'll just have to go through some preliminary questions with you.
>
> First of all, are you under the influence of alcohol, medication or drugs at this time?
>
> [THE APPELLANT]: Nothing like that.
>
> THE COURT: Okay. Are you under the care of a psychiatrist, psychologist or any other mental health provider for any mental condition that affects your ability to understand what's happening here today?
>
> [THE APPELLANT]: I would rather not answer that until I have my paid attorney present.
>
> THE COURT: Okay. Well, if you don't answer that question you're not going to have a paid attorney unless you hire a paid attorney right now. This is your chance to answer my questions. I have to determine if you are under any kind of mental issue to where you cannot even go forward today.
>
> [THE APPELLANT]: Yes, Judge. I'm hiring a paid attorney right now.
>
> THE COURT: Okay. So are you under the care of a psychiatrist, psychologist or any other mental health provider for any mental condition that affects your ability to understand what's happening here today?
>
> [THE APPELLANT]: I understand your question, but I don't want to proceed with the answers to any further questions without my paid attorney present.
>
> THE COURT: Okay. So.
>
> [THE APPELLANT]: With all due respect, I don't understand why it's a problem.
>
> THE COURT: All right. So do you -- are you in the process of hiring a paid attorney?
>
> [THE APPELLANT]: Yes, sir.

THE COURT: Okay. So let me just then, I can just easily speed this up. Until your paid attorney enters his appearance, the Public Defender is going to remain in your case and the case is going to continue to be set for trial for August 2nd.

[THE APPELLANT]: I understand.

THE COURT: So I'm just going to go through some preliminary arraignment questions.

[THE APPELLANT]: I understand.

THE COURT: So have you received a copy of the charges that's filed against you, sir?

[THE APPELLANT]: Not since 2016.

THE COURT: Okay. But you did in fact receive them in 2016; is that correct?

[THE APPELLANT]: That's correct.

THE COURT: Okay. And you understand at least at this point, you were convicted of two counts of first-degree murder; do you understand that? And those charges are still pending against you now. Do you understand that, sir?

[THE APPELLANT]: I understand and do not agree.

THE COURT: And you understand that the maximum sentence or penalties for those events is life in prison; do you understand that?

[THE APPELLANT]: I understand.

THE COURT: Okay. Then I'm going to also explain to you, sir, and you also understand that you do and even though you do have the services of the Public Defender, you do have a right to be represented by an attorney. An attorney can be helpful to you in explaining the charges that you are facing; explaining the possible penalties that may be imposed; can help protect your constitutional, statutory and any other rights; can help you get a fair penalty if you are convicted; can advise you of any appeal rights, any rights to seek a new trial or reconsideration if you are found guilty.

Even if you decide to plead guilty, an attorney can be helpful to you, among other things, by explaining exactly what you will be giving up if you do that and what the consequences would be. And I'll also tell you that an attorney has special training (indiscernible 9:06:36) part of it can help protect your constitutional rights.

They can cross examine the State's witnesses against you. They can help and to aid in your defense. They can use the court's subpoena power to subpoena whatever witnesses or documents you may need to aid in your defense. They can, like I said, use the court's compulsory subpoena power.

They can assist you in any way. They can advise you of whether or not you should testify or not testify. And they can file and discuss any appeal you may wish to file if you are found guilty. Do you understand that, sir?

[THE APPELLANT]: Yes. I understand all the things you just said.

THE COURT: And in fact, the attorneys that you had, we had a two-part trial. We actually had the first trial which was, the first part of the trial which was the guilt or innocent phase and the second is whether or not you were criminally responsible, and the three attorneys that you had did an excellent job.

Do you understand that, sir?

[THE APPELLANT]: I understand.

THE COURT: That's just the Court's opinion.

[THE APPELLANT]: I understand.

THE COURT: Okay. Even though the jury subsequently convicted you, we are now here as a result of the appeal and this case is going to be reset, as I said, reset for trial on August 2nd. Do you understand that, sir?

[THE APPELLANT]: I understand what you're saying.

THE COURT: All right. Now do you have any questions [for] this Court, sir?

[THE APPELLANT]: Not at this time.

The court asked the OPD attorneys for comments. One of them advised:

> Your Honor, I did indicate Mr. White has indicated he is working on hiring private counsel. I just would indicate to Mr. White that the earlier, of course, the sooner is the better as of that just simply for that attorney and for yourself. Do you understand that, Mr. White?

The appellant replied that he understood. He then was presented with and signed a form, captioned "Advice of Rights to Counsel (Maryland Rule 4-215)," which set forth all the Rule 4-215 advisements, including a warning:

> Do not wait until the day of trial, or even a week before trial, to get a lawyer. A lawyer needs time to prepare and may be unwilling to represent you if you wait too close to the time of trial.
>
> If you do not have a lawyer before the trial, the Judge will ask you why you are not represented by a lawyer. The Judge may find that your reason for not having a lawyer may not have merit and if that happens the Judge may find that you have waived your right to a lawyer, even though you say you want one, by failing to act promptly to obtain one, either privately or from the Public Defender.
>
> Do you understand what you have been told? Do you have any questions?
>
> My signature below confirms that I have been advised of the above and that I understand everything that I have been told.

The court reiterated a schedule the parties already had been informed about, that motions would be heard on July 15, 2021, and trial would begin on August 2, 2021.[2]

The case was called for trial on August 2, 2021, but could not proceed because the defense had filed a request for a competency evaluation that had not yet been completed. One of the OPD attorneys explained:

> [OPD ATTORNEY 1]: . . . Mr. White has expressed the desire not to have us defend him and to obtain private counsel. That is acceptable of Mr.

[2] In addition, the prosecutor served the appellant with notice of the State's intent to seek sentences of life in prison without the possibility of parole.

> White and he's made that very clear to us and to the Court. We would be loathe to set any date other than as to the status of the competency, because while the competency's pending we can't go forward on any other matters. So we would ask that you set out a date after 14 calendar days because the DOC needs ten business days to writ, so just a date after two weeks from now to address the competency issue.
>
> I would also note that just to clarify for Mr. White, on April 22nd, I filed simply a competency. There's no NCR currently filed in this matter. That was done on April 22nd, so NCR, a plea for NCR has not been filed as of yet as in accordance with Mr. Craig's (sic), like his purview on him based upon being competent to make that decision.

The court heard from the appellant, who said he did not wish to be represented by the OPD attorneys and that he wanted to represent himself but, as an alternative, he was attempting to hire private counsel:

> So there are two things that I would like to remind the Court. When I see -- when I saw the Court for the first time months ago and years, on video, I made it clear that I wanted to discharge the Public Defender's Office and that I wanted to represent myself. And that is my wish is to represent myself.
>
> I think that the best representation for me is me. You know, all of my supporters are on board with that and believe the same thing. We had 45 people show up. We didn't know that court was canceled last time we had it. And so I just want to point out that I do wish to represent myself. However, when I went to discharge the Public Defender's Office and I clarified that I wish to represent myself, I know that, Judge . . . , you may have had some concerns and simply at the time, you know, would not allow that.
>
> So since then, I looked into attorneys that I was going to hire prior to trial last time. We had arrangements worked out with them, met, and Justin Esworthy,[3] they're cousins, we had arrangements worked out with them before my first trial, but I was put on segregation for a month.

[3] Ordinarily we would redact the names of attorneys not relevant to the proceedings. We use the names of the various private attorneys the appellant claimed to have consulted to avoid confusion. We intend no disrespect to other attorneys whose names have been redacted.

* * *

You know, I should have had a lawyer last time. Over the last few years, I've considered, you know, either hiring an attorney or representing myself. It is my wish to represent myself.

But since, you know, the Court, you know, Judge . . . , I saw you had some genuine concerns, I went and, you know, went and talked to a number of different company and, you know, experienced attorneys, one being Warren Alperstein and his partner Joe. I'm not going to say his last name. It starts with a P, but I'll pronounce it wrong so I'd rather not.

But Warren and Joe came to see me Friday, you know, and we worked things out and have an arrangement if I'm not allowed to represent myself, which I want to make clear on record that it is my desire. And it is my desire to go through a process, whatever it may be, in order to prove that I am competent to represent myself.

But if I cannot represent myself, we have an arrangement today to follow through on in order to, you know, have them be retained and the Public Defender's Office is aware of this. [OPD attorney 2], seating next to me, has spoken to Warren Alperstein and is aware of the arrangement.

* * *

But certainly, going forward, if I'm not allowed to represent myself, you know, Warren Alperstein would be the representation that I would choose and I would like to have a due process hearing addressing where I would be until trial.

The court explained to the appellant:

All right. Well, Mr. White, let me just tell you, I recall last time we were here you wanted to discharge the Public Defender, but then you also refused to speak to me. And I said -- because you were not prepared or you were not ready or they did not tell you what the hearing was for and so you refused to answer the questions.

You were still respectful to this Court but you still refused to answer questions. And I remember saying, "Well, you've made my job easy. I'm not going to discharge the Public Defender. I'm going to keep them in this case. But if you hire a private attorney in the interim, then the Public Defender's

> Office will strike their appearance." I recall saying that. And we set the case for the motions today.
>
> * * *
>
> And part of the issue is that I have to deal with is since you are being evaluated for competency, let's see what happens with that before I address your request to represent yourself. If you are found to be competent, then I will entertain any arguments you wish to make.
>
> I will have a number of questions I'm going to ask you and we will have this conversation back and forth as to why you want to discharge them, et cetera, because I told you last time, you have three very good, competent attorneys who obviously did a great job representing you because you're now here on a re-trial through whatever legal issues that they raised and it was successful in at least getting you a re-trial.
>
> But I will -- if you want to hire Mr. Alperstein and his firm that's completely within your call. But at this juncture, since you're being evaluated for competency, if you do come back competent, then I will hear your arguments and entertain any arguments you wish to make concerning striking their appearance, because there's a lot to go on if you're representing yourself in these matters.

The court scheduled a status hearing for September 10, 2021.

On September 9, 2021, the appellant retained private counsel. When the September 10 hearing commenced, the court ascertained that Joseph Pappafotis had entered his appearance on behalf of the appellant and then granted the OPD's request to strike its appearance.

At a competency hearing on October 14, 2021, the court was advised that Mr. Pappafotis had had an opportunity to read the report from Clifton T. Perkins Hospital Center and, having done so, would not contest that the appellant was competent to stand trial. The court, having reviewed the report as well, found beyond a reasonable doubt that

the appellant was competent to stand trial. It scheduled motions to be heard on June 10, 2022, with trial to commence on June 21, 2022.

On March 4, 2022, Mr. Pappafotis sent the appellant written notice that he would be filing a motion to withdraw his appearance "[p]ursuant to [their] recent conversation" and the appellant's instructions. In that letter, Mr. Pappafotis further advised the appellant that, should he contact another attorney, that attorney should enter an appearance on the appellant's behalf. On March 15, 2022, Mr. Pappafotis filed a motion to strike his appearance.

On March 24, 2022, the court held a hearing on that motion.[4] The appellant withdrew his request to discharge counsel, stating that he was satisfied with Mr. Pappafotis's representation. The court accepted the withdrawal and rescheduled the motions hearing to November 18, 2022, with trial to begin on December 12, 2022.

By letter dated April 7, 2022, but received several weeks later, the appellant once again notified the court that he wished to discharge Mr. Pappafotis. On May 26, 2022, the court held a hearing on that motion to discharge counsel. The court asked the appellant to explain why he wanted to discharge counsel, and the appellant replied:

> With respect to Mr. Pappafotis and his office, I don't want to get into all of the reasons that I chose to make this discharge filing. For my trial's sake and for the sake of justice and what I want, okay, what I've said from day one is that I have no expressed wish to plead NCR. I only have expressed a wish from day one to plead not guilty.
>
> With respect to Mr. Pappafotis at the last hearing, he had indicated that though I was always very against hearing the letters NCR, even in the

[4] Due to a "hardware issue," there is no transcript of that hearing.

> same sentence since I met him and his firm, that I somehow had an expressed wish to plead NCR. And that is not true.
>
> So, with that said, I want to make clear that I've never expressed that I wanted to plead NCR or that I had an express wish. Those were his words and not mine. And with respect to Mr. Pappafotis and his sharp defenses of me in our last hearing -- for example, when the Prosecutor tried to indicate, though, that somehow I was just trying to postpone things as if I don't want to have a trial and be proven innocent and return to my friends and family. He quickly jumped up and said, "That is a stretch." So he has defended me in ways I have been satisfied with, and I like Mr. Pappafotis. I don't feel I would like to disclose all of the reasons for this discharge.

The appellant then said he had paid a retainer as well as additional funds to Mr. Pappafotis and that he needed to work out an arrangement by which he would be refunded some of that money so he could hire new counsel. The court advised the appellant:

> But Mr. White, let me just explain to you, I mean you're here because I got your letter saying you want to discharge Mr. Pappafotis. I know we had communications or conversations in court about that prior, which is when you withdrew him, and I explained to you then, and I explain it to you now, if you wanted to discharge him, I need to go on the record with you to confirm that you are going to discharge him because if you discharge him, and I don't find it's a meritorious reason -- I'll allow you to discharge, but you will not be getting a postponement of your trial.
>
> Your trial is currently now set for December 12th of this year. So, if you're not satisfied with Mr. Pappafotis, I guess I'll hear your reasons why you want to discharge him -- whatever financial agreement or arrangement you may have with his office, that's between you and his office. The Court is not involved in that. What he returns of what you paid him is between the two of you, and the Court doesn't get involved in that.
>
> If you wanted to hire another attorney, that's completely within your discretion and your rights. But right now, your case is set for December 12th. And as I said, if I don't find you have a meritorious reason, I'm going to advise you of your rights to counsel again today and how it's important to have one. And I know you might have some trial strategy differences, and that's between the two of you on how you're going to present your case, you know.

> Your last case, there was the. [sic] You testified during the NCR. I remember you admitting to killing your mother, but said it wasn't like the medical examiner said. Okay. That's fine. That's all going to be part of your trial strategy on whether or not you're going to testify or not, but I can guarantee you that prosecutors have a transcript of what you testified to, so that's going to be probably part of your strategy on how to present this, plain and simple, but that's between you and your lawyer or lawyers.
>
> But today's purposes is at least for this Court to determine if you have a meritorious reason or not. If you want to discharge Mr. Pappafotis, discharge him. If I find it's not meritorious, okay. When you come here on December 12th, you don't have a lawyer, chances are I will hear from you. It's possible I can say your request for a lawyer is denied because I told you back in May how important it was and for whatever reason, you don't have an attorney, or just, I'm going to represent myself.
>
> If you feel comfortable and confident to that part, to that extent, go ahead. But I'm just here to deal with your request to discharge your lawyer and whether or not there's merit to it or not, and whether or not -- like I said, if I don't find there's merit to it, I'll let you discharge him. I would not expect a postponement come December because I didn't have time to get a new lawyer, or Mr. Pappafotis didn't give me whatever money he said[] he's going to give me. That's not going to be my issue. It's going to be your issue.

The appellant complained that his OPD attorneys from the first trial had coerced him into pleading NCR, which resulted in a record that led the attorneys he consulted not to want to take his case, as they all thought he should enter an NCR plea. The court replied in part:

> I mean that actually says something that you said you had twenty attorneys, the woman in the front row has twelve attorneys. That's over 30 attorneys that disagree with your with your approach to the case. Okay. They don't want it for whatever reason. Is that sending you a message, yes or no? I don't know. I'm here just to deal with your request to get rid of your current attorney. And if you let him out, and that's what I said, I don't see where it's meritorious at this point. I've got some questions for you, so you can appreciate and understand, I think you do, understand the importance of a lawyer. But if you discharge him and I let him out, he's done. You're now going to have to either represent yourself or have somebody else sitting there come December 12th. That's all. What happened with your discussions with

> the public defenders in the first case doesn't matter now. I'm dealing with your current trial.
>
> So, did you want to give me any other reasons you want to get rid of Mr. Pappafotis? I'll hear from him and I'll hear from the State. I'll give you the final [word] and I'll make my decision because it's already 11:30 now and we haven't even got to the meat or the substance of today's hearing. So what are your reasons, tell me succinctly, you want to get rid of Mr. Pappafotis, and I'm going to move forward.

The appellant replied that he did not want to discharge Mr. Pappafotis "until we come to an agreement" and continued to complain that he had been "forced" to enter an NCR plea in the first trial. The court said it did not want to "get[] into a discussion" about that and then conducted another Rule 4-215 colloquy:

> THE COURT: . . . I don't know how [you could] sit and not do anything for thirty days and then we'll come back, and if I'm satisfied and we work at a new agreement to where I'm getting a refund, I'm not in the middle of that. That's between you and your lawyer or lawyers that you hire. I mean, based on what you're telling me today, I don't see where you have any kind of meritorious reasons to discharge your attorney, so I'm not going to, you know, sanction that.
>
> If he strikes his appearance and you're fine with it, okay. I'm going to ask you a couple questions now about the importance of a lawyer, but I think you already know how important a lawyer is. You know, your understanding that they can help you throughout this trial, do you understand that?
>
> [THE APPELLANT]: I understand.
>
> THE COURT: Do you understand the role of a lawyer to represent you? Is that correct?
>
> [THE APPELLANT]: I understand.
>
> THE COURT: All right. You understand a lawyer can help you present evidence or even cross examine the witnesses against you? You understand that?
>
> [THE APPELLANT]: I understand.

THE COURT: I mean, you can actually -- and you already said this, that you can meet with your lawyer and you can discuss what witnesses that would testify on your behalf. Do you understand that?

[THE APPELLANT]: Of course. I understand.

THE COURT: Do you understand that an attorney can present facts that are favorable as possible to your side of the case to the Court and jury?

[THE APPELLANT]: I understand that, too.

THE COURT: Okay. And you understand that even if you decide to change your plea to guilty, a lawyer could be helpful to you in assisting you to develop the information to this Court that could affect the sentence the Court would impose. You understand that?

[THE APPELLANT]: I do. I understand.

THE COURT: And you've already had the Public Defender, so they're out of the case. You understand that when you proceed to trial on these charges, that you have certain rights, like to call witnesses on your own behalf. You understand that?

[THE APPELLANT]: I do.

THE COURT: Your right to confront witnesses against you as I already said, cross examine those witnesses? You understand that?

[THE APPELLANT]: I do.

THE COURT: You understand a lawyer can help protect your rights, your constitutional and your statutory rights?

[THE APPELLANT]: I understand that.

THE COURT: All right. You understand that if you proceed on your own behalf, that could actually hurt you at trial and they could cause you some kind of harm because you don't have the special training and education and experience that lawyers do. Do you understand that?

[THE APPELLANT]: I get that, but I have furthered my education.

THE COURT: Well, do you understand that if you decided to represent yourself, even though you are not a lawyer, you still have to comply with the rules and the procedural rules regarding trials in this case? Do you understand that?

[THE APPELLANT]: I get that, too.

THE COURT: Okay. And you understand that if you are found guilty, and you want to file an appeal, that you will not be able to complain that you made a mistake in representing yourself? You understand that?

[THE APPELLANT]: Can you please repeat that one more time?

THE COURT: You understand that if you were found guilty and you want to file an appeal, you cannot complain that you made a mistake in representing yourself? So if you decide to represent yourself and you go to trial or you're found guilty, you can't complain about that? You understand that, that you made a mistake in making that decision?

[THE APPELLANT]: I do understand.

* * *

THE COURT: Assuming you were found guilty and assuming you represent yourself, and that's something on appeal that you may want to raise, that you didn't know ABC, XY or Z, even though the Court has advised you, you're presumed and assumed to know all the rules and how to get evidence in and how to conduct a trial and you should assume that. And I know, because you've already complained now you cannot properly prepare because you didn't have all the documents because your documents never followed you from whatever hospital or whatever facility. You've been complaining about that from day one, and I tried to help you with that.

[THE APPELLANT]: I appreciate it.

THE COURT: And I was told that they've had your materials there, they made appointments for people to come get them, they never show up and blah, blah, blah, and I mean it's OK that's fine, turn it over to your lawyer, but I did what I said I would do and I contacted the facility and they had your papers and they got them to your lawyer and what's there is there. That's it. But, and you can complain about that, assuming you are found guilty if you feel you did not -- you were not justified in the amount of time you had to prepare and research your case. But that's also part of having an

> attorney. An attorney can do all of that for you. But if you represent yourself, that's going to be your problem. I just wanted to make sure you understand that.
>
> [THE APPELLANT]: I understand and I'm assuming that I'm gonna be acquitted.

Mr. Pappafotis asked the court to grant the appellant's motion to discharge counsel, stating in part:

> I think that one of the most important things for him is that he has Counsel that he is confident in with the understanding that there's a trial date in December. What I do not want to see is anyone have ineffective assistance. I don't want to see somebody essentially coming in late or us being instructed to not work.

After hearing from the prosecutor, the court heard from the appellant one last time:

> I just want to say that I do object to the withdraw or discharge at this time, and that the only thing standing between me and the objection, other than the possibility of moving forward which we had originally discussed, is simply a contractual agreement that is much more binding than the paperwork that we both already have down to the exact amount that we have agreed to in word over the phone, which is for Mr. Pappafotis to keep 20,000, plus three hours for additional services, 21,500, and for his firm to return all other funds that have been paid, and we're talking over $100,000, so more than 100,000. So with that said, again, I do object to it because I did all my diligence, I've been calling the office every day for weeks.

The court interjected:

> Let me stop you, Mr. White. You object, but you were the one that filed this Request to Discharge. You said, "I hereby discharge." I brought you here to make sure that that's what you want to do. Now, you're objecting to the discharge. It doesn't make sense. Either you want it or you don't. I know you're backing off, you're withholding. I am not here to have any discussions or negotiations between you and your current attorney for what you will get if he strikes his appearance from the remaining retainer. It doesn't matter to me. That's between the two of you. I'm here because of your request to discharge your attorney.

> Now, the attorney is somewhat in agreement and now you object because you're changing your mind for the second time? This is what the Court is going to do. I'm going to reserve decision for two weeks. If Mr. Pappafotis files a Motion to Discharge, I will give you a few days to respond because we're only here because you wanted to fire him in the first place. And I don't care if you get any money back or not. I don't find it's a meritorious reason, but if he files something in writing and I don't get an objection from you, I'm granting his request and you will be representing yourself, plain and simple, because [the prosecutor's] right, because your trial is 6 1/2, 7 months away. So, under the speedy trial rules, that's sufficient for you to get an attorney and to go forward.
>
> Now, I'm assuming some attorneys will need more time than that to investigation and research because there's probably thousands of pages involved, and you want whoever witnesses investigated and called and talked to. That takes time. So this is what I'm going to do. I'm going to reserve a ruling. If Mr. Pappafotis files something, like I said, I'll give you some time to respond. The chances are, he's going to be out because you already told the Court that you're not satisfied.
>
> But this back and forth and now we're discharging him, I'm not, I discharge him, I'm not having anymore. Like I said, we're here because you sent a letter in saying, "I hereby discharge my lawyer." I just need to reiterate to you how serious this is and how serious you should consider having a lawyer represent you in this case because, as you already know, you're facing two life sentences, and you're not going to be happy with everything your lawyers do, whatever the trial strategy is.

After telling the appellant that "hopefully" the court would not see him again until he returned "for some other hearing, most likely in December," the court adjourned the hearing.

Several weeks later, on June 10, 2022, Mr. Pappafotis filed a "Motion to Strike Appearance," which included the appellant's signed agreement to Mr. Pappafotis's withdrawal of representation. On June 14, 2022, the court granted that motion.

The next scheduled hearing was on November 18, 2022, but the appellant was not transported to court because he was in COVID quarantine. The motions hearing was rescheduled to December 9, 2022.

The appellant appeared at the December 9, 2022 hearing without counsel. After observing that Mr. Pappafotis's appearance had been stricken and that no other counsel had entered an appearance, the court asked the appellant "what is your plan on representation come Monday?" He replied:

> So, representation would be the first thing that if none of this was discussed, I would have addressed. My plan for representation and my petition to the court is pretty simple. I have some things written that I'd like to read so that it's more structured in its presentation. But basically, to give a general idea to the Court, prior to reading this, Lauren Kollecas has already agreed to take my case. I've had attorney meetings with her. Andrew Jezic was my number one choice of attorney. I mentioned him before. There were basically some things that stopped us from establishing a commitment months ago. Those things have been worked through and they both agreed to take my case.
>
> I was on a unit that had COVID more than anywhere in the jail, anywhere in the institution, so almost half the people on the unit had COVID. So, for like two months, attorney visits were very restricted, sometimes not at all. And there was just a lot of restricted access to a lot of things-- no law library. And long story short, it really delayed the process of this materializing and it materialized much later than it would have if for over two months we weren't dealing with the COVID issues on our unit.
>
> * * *
>
> But basically, the logistics have been already worked out with the Azari firm, Omid Azari who is the head of the firm that Lauren Kollecas lawyers from. And so they are actually sending a letterhead to you today so that, you know, it can be overnighted and the Court receives it as soon as possible. They would have made an electronic filing, but since their appearance hasn't already been entered, they have not been -- they wouldn't be able to make an electronic filing.

> Andrew Jezic is in a three-week murder trial right now. So, some of his concerns about the logistics which, you know, we're completely prepared to enter into an agreement with. My attorney visit with Lauren Kollecas was just Tuesday, so this has all transpired over the last couple of days. But [l]ong story short, we have an agreement, and the Omid Azari firm has basically portrayed the logistics to Andrew Jezic. He, prior to Lauren's visitation, has already agreed to accept my case as long as the logistics matched, and they do.

The court inquired extensively about what steps the appellant had taken from June 2022, when Mr. Pappafotis's "Motion to Strike Appearance" was granted, until December 2022. The appellant gave a rambling and digressive presentation, repeatedly complaining about the conditions of his pretrial incarceration, COVID lockdowns, limited access to the law library, and logistical problems in conducting face-to-face meetings with attorneys. He named a series of attorneys he had consulted, none of whom had agreed to represent him. He requested a postponement so Ms. Kollecas and Mr. Jezic could enter their appearances on his behalf, but he could not guarantee that they would do so. During a recess, the prosecutor attempted to contact Ms. Kollecas and Mr. Jezic; he was able to talk to Ms. Kollecas, who "confirmed some parts of what the [appellant] represented" but said "it could be as long as the end of the month before they would make a definite decision as to whether they were entering their appearance."

The court then denied the postponement request:

> All right. Thank you, Mr. White. Mr. White, you've asked this Court for a fair trial. I've been the presiding judge on your first trial. It has been this Court's intent and this Court's belief that you have always had a fair trial, and the verdict was what it was from this jury. I have considered your arguments. I've considered your comments. I've advised you on two prior occasions that if you discharge your attorney when it comes down to the trial date, you may be representing yourself if you do not have an attorney.

> Now we find ourselves in a position to where you are pleading with this Court for another postponement in order to obtain an attorney who have not entered their appearance. I get the fact that there have been some delays because of COVID and some issues at the Detention Center. But the same problems you've complained about by not having your food or proper diet were the same problems we've been dealing with from the very beginning of this case, the same thing about your access to the library, the same problems that you've had in each and every institution. I'm hearing this over and over and over again.
>
> So I find no reason to grant another postponement in this matter. The request to postpone this matter is denied. The Court found that you have discharged your attorney. I warned you, and now we are going forward. So we will be going forward on Monday. Postponement is denied.

Near the conclusion of the hearing, following additional argument on other preliminary motions, the court reiterated:

> Thank you. Your request for a postponement has been considered and is still denied. I will see you all Monday morning. Thank you.

***

The appellant contends the trial court erred by violating Rules 4-214(d) and 4-215 and further erred by denying his postponement motion. He maintains that the court violated Rule 4-214(d) because, after granting defense counsel's motion to withdraw, it failed to hold "proceedings," with the appellant present, to ascertain that the requirements of Rule 4-215(a) (governing required advisements to the defendant) had been satisfied. He further asserts that the trial court violated Rule 4-215(d) (governing waiver by inaction) because it "failed to sufficiently inquire into the circumstances surrounding" his lack of representation and because "the record did not support a finding" that he "neglected or refused to obtain counsel." Concomitantly, the appellant asserts that the trial court erred by denying his request for a postponement so that he could obtain counsel.

The State counters that the "court complied with Rule 4-215 by prior advisements." According to the State, regardless of whether Rule 4-214(d) (governing counsel's motion to withdraw representation) or Rule 4-215(e) (governing a defendant's request to discharge counsel) applies, the result is the same because "the court conducted the inquiry and advisements that the rules mandate." Specifically, the State maintains that "the record reflects prior compliance with the requirements of Maryland Rule 4-215[,]" and therefore, "the court was not required to hold an additional hearing to advise [the appellant] of what he had previously been advised" twice before. And finally, the State asserts that the trial court properly exercised its discretion "in concluding that [the appellant] waived his right to counsel by inaction, and subsequently, in denying [his] postponement request."

***

Rule 4-214(d) applies when criminal defense counsel seeks to strike his or her appearance:

> (d) **Striking appearance. —** A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. <u>If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.</u>

(Emphasis added.)

Rule 4-215 governs waiver of counsel and provides in relevant part:

(a) **First appearance in court without counsel. —** At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

* * *

(d) **Waiver by inaction—Circuit Court. —** If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that

> time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.
>
> (e) **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.

(Emphasis added.)

We apply a bifurcated standard of review in addressing a trial court's application of Rule 4-215. To the extent the court's ruling involves an interpretation of law, we review the ruling without deference. *State v. Weddington*, 457 Md. 589, 598-99 (2018); *State v. Graves*, 447 Md. 230, 240 (2016); *State v. Taylor*, 431 Md. 615, 630 (2013). "However, a trial court's determination that a defendant had no meritorious reason to discharge counsel under Rule 4-215(e) is reviewed for an abuse of discretion." *Cousins v. State*, 231 Md. App. 417, 438 (citing *Taylor*, 431 Md. at 630), *cert. denied*, 453 Md. 13 (2017). In reviewing for abuse of discretion, "we do not reverse 'simply because the appellate court would not have made the same ruling.'" *Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North v. North*, 102 Md. App. 1, 14 (1994) (en banc)). "Rather, the trial court's

decision must be 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* (quoting *North*, 102 Md. App. at 14).

Here, the trial court conducted two extensive Rule 4-215 examinations of the appellant, the first on March 3, 2021, when he discharged his public defenders, and the second on May 26, 2022, when he was in the process of discharging Mr. Pappafotis. When Mr. Pappafotis filed a motion to strike his appearance, as the appellant had wanted him to do and that the appellant supported as evidenced by his signed agreement, the court was not required to conduct a third examination before granting it.

Rule 4-214(d) obligates a court to ensure a defendant's presence in court for "proceedings pursuant to Rule 4-215" if it grants an attorney's motion to strike appearance, and the defendant is left unrepresented. But Rule 4-215(a) provides that the court is required to give the advisements when "the record does not disclose prior compliance with this section by a judge[.]" Here, the record amply demonstrates prior compliance with Rule 4-215(a).

Rule 4-215(e), which applies when a defendant discharges counsel, likewise obligates a court to give the advisements set forth in subsection (a) if "the docket or file does not reflect prior compliance." Here, of course, there *was* prior compliance. Thus, regardless of whether we treat the matter as the trial court's grant of Mr. Pappafotis's motion to withdraw or the appellant's motion to discharge, the outcome is the same. The trial court's two-time prior compliance with Rule 4-215(a) was more than sufficient to comply with the rule.

The appellant fares no better in his assertion that the trial court abused its discretion by finding waiver by inaction and denying his eleventh-hour postponement request. The appellant had nearly six months, from June 14, 2022, until December 9, 2022, to obtain counsel after Mr. Pappafotis's appearance was stricken. The trial court warned the appellant repeatedly that his reasons for discharging counsel were not meritorious and that, if he were to appear once again without counsel, he would be deemed to have waived counsel by inaction and would have to stand trial unrepresented. And yet, the last business day before the scheduled start of trial, the appellant could offer the court nothing but a litany of excuses and a vague promise that counsel would enter their appearance in the near future. The trial court had to balance the appellant's lack of meritorious reasons for requesting a postponement against the burden a postponement would place on the State's witnesses, some of whom had retired and moved out of Maryland during the lengthy time between the murders and the retrial. We hold that the trial court did not abuse its discretion, either in finding waiver of counsel by inaction or in denying the appellant's eve-of-trial postponement request.

II.

On Monday, December 12, 2022, the first day of trial, the appellant refused to appear. After consulting the prosecutor and researching relevant case law, the court drafted a memorandum, advising the appellant that should he refuse to be transported to court that afternoon, the trial would begin at 1:30 p.m., notwithstanding his absence. The memorandum was faxed to the Howard County Detention Center, where a correctional officer presented it to the appellant for his signature. The appellant refused to sign it. Upon

being so informed, the trial court found, pursuant to Rule 4-231,[5] that the appellant had waived his right to be present for trial. The proceedings commenced that afternoon in the appellant's absence. Jury selection was conducted and a jury was selected.[6]

The next day, Tuesday, December 13, 2022, the appellant appeared in court.[7] The trial court began by offering the appellant the option to waive a jury trial because he had not been present for jury selection. The appellant claimed that he had wanted to appear the previous day but that his jailers had not given him access to appropriate attire or grooming. He expressed concern that the jurors would infer from his failure to appear that he did not care about the outcome of the proceedings, which would be "highly prejudicial" to him. On that basis, he moved for a mistrial. The court denied the motion, explaining that the appellant had been afforded every opportunity to appear for jury selection and that his failure to do so was his own decision. The trial court noted for the record that the appellant "look[ed] completely fine" but that, if he had come to court the preceding day and had had any problem with clothing or grooming, the court "would have addressed it."

The court followed up on its previous inquiry, again asking the appellant whether he wished to waive a jury trial or to proceed with the jury selected in his absence. The

[5] Under subpart (c)(1) of the rule, a defendant "who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain[,]" may be deemed to have waived his right to be present. Md. Rule 4-231(c)(1).

[6] The appellant does not contend the trial court erred or abused its discretion in finding that he was voluntarily absent from trial on December 12, 2022.

[7] The appellant gave the court reasons for his absence the day before. The court found his reasons for not being available for transport to the court not credible.

appellant replied that he did not believe the court would be impartial. The court adamantly disagreed. Ultimately, after the appellant repeated his opinion that the court would not be impartial, the court stated that it would not accept "any waiver of a jury trial."

During the prosecutor's opening statement, the appellant disrupted the proceedings by shouting out that he was innocent. The court excused the jury temporarily and a bench conference ensued. The appellant said, "Your Honor, I just don't wish to proceed because I don't know who the jurors are." The court replied that "that opportunity was yesterday" and warned the appellant that if he "continue[d] to make these outbursts," he would be removed from the courtroom for "disrupting this case." The appellant then went into a rambling digression about his inability to eat, his medical condition, and his dental problems. Among other things, he told the court that he was scheduled to have teeth extracted on Thursday, December 15, 2022, and that he anticipated not being available for trial that day or the following day. (The court subsequently inquired at the detention center and was informed that no such dental surgery was scheduled.)

The jury returned and the prosecutor gave his opening statement. When it was the appellant's turn to do so, he became disruptive, saying, "I wish not to proceed[.]" Outside the jury's presence, the court ordered that the appellant be removed and placed in a holding cell for the remainder of that day's proceedings.[8]

[8] The appellant does not contend the trial court erred or abused its discretion by finding that he waived his right to be present on Tuesday, December 13, 2022.

The appellant was present for trial on Wednesday, December 14, 2022, and Thursday, December 15, 2022. Near the conclusion of the proceedings on December 14, he said he would be moving *in limine* "to put things on the record and make certain requests." When the case was called on December 15, the court heard the appellant's motion. The appellant asked the court:

> You know, if the Court requires to see, you know, we can show the Court all of our efforts. But if the Court doesn't require to see, then I'll just continue -- I'll continue to move on and just basically make known that I want to make my case. You are absolutely right. But at the same time, I am not able to prepare properly to do so right now. And my first request is going to be that if after my additional concerns are made known you decide that you'd like to move forward that I would have the option of waiting till Monday [December 19] to start to present my case, which would give me the weekend to get everything in order and start to make my case Monday. So I'd like to just hear from Your Honor on that request.

(Emphasis added.) The appellant continued with a laundry list of complaints about the conditions at the Howard County Detention Center and how they purportedly interfered with his trial preparation. He went on to say:

> All right, so as part as Motion in Limine, I just want to say that I am anxious -- not anxious -- I am determined to make my case. And I've been looking forward to that for a very, very, very, very long time. But at this point, with everything I just said and much more to say, I simply object to the trial continuing without counsel. You know, I simply believe that if I had counsel present while this was all going on in the middle of a trial, you know, that there would have been a lot more changes, and, you know, a lot more -- it would have been a little different, at least during the trial. You know, at the same time, it should have been different all along.

Ultimately, the court asked the appellant whether he was finished, and the appellant replied:

> I'm done, and I just wanted to say that if the trial does proceed forward, I do object to that and wish it be noted.

After the court heard from the prosecutor, the appellant again insisted that he be allowed to begin presenting his defense on Monday, December 19, 2022, when he would be "ready." The court deferred ruling, saying:

> All right, thank you. All right, first of all, you want to start your case on Monday. [The prosecutor] had indicated to the Court it's possible he may get his case done today. It may not be done today. We will have to see what the timing is with the ending of the State's case before I decide when we are going to start. But as I told you from the beginning that once the State finishes presenting its case, you will be allowed to present your case to this Court. It's a matter of timing.
>
> * * *
>
> So chances are the State will not finish his case until tomorrow and we will see what is an appropriate time. So you may or may not get to start your case on Monday. You may have to start tomorrow afternoon or it may actually start Monday. That's number one. So I'm going to reserve ruling on that request.

When trial resumed on Friday, December 16, 2022, the appellant was not present. The court put on the record that it had been notified that the appellant "was ill and refused transport." The court further explained that an assistant had called the detention center and was told that the appellant "was vomiting and was taken down to the nurse" but that his COVID test was negative. The court ordered a brief recess so that it (and the prosecutor) could reach out to the detention center for more information.

The proceedings resumed and the prosecutor addressed the court:

> Your Honor, I have the following information. I received a response from Security Chief Rory Wise at the detention center. I'm just going to read it verbatim for the record. It says, "Okay. Spoke with my sergeant in commitment, where CW", I assume that refers to [the appellant], "was waiting to go to court. Soon as he saw the sheriffs, he started his nonstop coughing thing. [The appellant] was taken to medical and given a rapid

COVID test, which came back negative. He has not been seen demonstrating illness type behavior, like throwing up, sick looking, et cetera.

"Specifically, my Sergeant [Mathew] said he was just faking to not go to court. The sheriffs did get documentation from my medical department" saying the -- "stating the COVID test outcome. End result was that he did not go to court and was returned to his receiving unit cell. Let me know if you need anything else."

In response to that email, Your Honor, I emailed Chief Wise back and asked if Sergeant [Mathew] would be available if requested by the Court to, either speak to the Court or give testimony over Zoom, if you wanted to inquire further.

Also, on the way up to court, after I got that information from Chief Wise, I ran into Deputy Tuggle, from our sheriff's department here, who was the officer that was at the doorway of the receiving unit to take [the appellant] to court. He indicated -- and I -- and I don't want to put words in his mouth, so I'm just going to paraphrase -- that when he saw [the appellant], [the appellant] was -- went over to the toilet and was kind of retching in the toilet, but there's a wall there blocking the toilet from the view of the doorway where Deputy Tuggle was standing.

Deputy Tuggle said he appeared to be acting as if he was throwing up, but he could not confirm whether or not he was actually vomiting or just retching and/or fake retching. He indicated he had a brief conversation with [the appellant] about coming to court. And again, I don't want to mischaracterize what he said, but he's available -- vehicle -- for inquiry by Your Honor, but it was words to the effect that [the appellant] first said he was fine, needed to go to court so he didn't get deemed fail to appear. And then he said -- and then a few moments later he goes, I'm not going to court, I'm too sick.

It's unclear, again, whether he was doing that for show to Deputy Tuggle or whether it was genuine. My suspicion is based on the characterizations of Mr. Wise, Sgt. Mathew, and my conversation with Deputy Tuggle is that, the illness is feigned. And I would like the Court to consider at least maybe having Deputy Tuggle come in the courtroom and repeat for the record what he told me, and even possibly having Sgt. Mathew on Zoom, or maybe you'd just communicate with him privately and then make a record of what he said.

The court ordered another recess for arrangements to be made for Deputy Tuggle and Sergeant Mathew to testify (outside the jury's presence). While waiting for Deputy Tuggle to appear, the court remarked:

> [I]t's clear to this Court, based on [the appellant's] conduct and behavior during this trial . . . that he's doing what he can to not have this case go forward, or to result in some kind of mistrial, or some favorable outcome on appeal, if he is convicted[.]

Thereafter, Deputy Tuggle, the officer assigned to transport the appellant to court that morning, appeared and testified as follows:

> [The appellant] was in one of the holding cells with a couple other prisoners. When I went to the holding cell to put the restraints on, he was standing near the toilet, coughing aggressively, and it appeared as if he was throwing up.
>
> Now, there was a -- there is a partition beside the toilet that prevents you from seeing his entire body, but I could hear as if he was throwing up. Now, I don't know if he did it or not, but it appeared as if he was throwing up and he appeared to be coughing aggressively.[9]
>
> So I asked him if he was okay. Initially, he said, yes. And then later on, he said he didn't think he could make it to court.
>
> He was offered to have a rapid COVID test done and he agreed to do that, but when he was escorted to the area where they were going to do the testing, then he refused to do the rapid COVID test. So as a result of me not knowing if he was sick or not, we left him there.
>
> And the area of the transport vehicle that he would have been in, he also would have been in with other inmates. And they saw the way he was acting and they were questioning whether or not he should be transported along with them.

[9] Deputy Tuggle later clarified that he could only infer that the appellant was vomiting from the "sound that he was making" and that he did not hear the sound of vomit "splashing against the bowl[.]"

> So with that, I don't know if he was faking it or not. The only thing I can say is that I saw him coughing aggressively, and it appeared as if he was throwing up, but I never saw anything come out of his mouth. And he refused to take the rapid COVID test, after he agreed that he would take it.

The court interjected:

> So he may have refused when you were there, but he subsequently did take the COVID test, and it is negative.

Sergeant Mathew testified via Zoom. The prosecutor asked him to describe his "observations" of the appellant that morning, "as he was preparing for transport to court, in terms of his illness[,]" as well as any conversations they may have had. Sergeant Mathew replied:

> I came in at 8 o'clock. I'm supposed to conduct the commitment duties today, with, like, including bail reviews, and I deal with the courts all day today. So while I'm coming in to take over my post today, I saw all the sheriffs from the Howard County Sheriff's Office start -- they put the restraints on all the inmates that were supposed to go to the court today.
>
> And while they were about to put the restraints on [the appellant], he started coughing like it was, like, too much out of the, you know, situation, like, you know -- I -- I saw he was, like, really not feeling well. So that continued for, like, few minutes. The sheriffs waited to see, you know, if this is going to subside, but unfortunately, this continued for a while.
>
> So we took him -- having -- you know, we have quite a few incidents of COVID positive rates these days here. So we took him upstairs to the medical department, and the nurse administrated a COVID rapid test, which came out as negative. Apparently, the nurses at the medical department did not find anything significantly wrong with him.
>
> So by the time, you know, all that movement upstairs to the medical department and all that, the sheriffs, they left with the other people that need to be transported to the courts. So when he came down later on from the medical department, he waited there. Of course, you know, he didn't have that -- the kind of intensity that he was doing with his -- you know, help -- whatever cough or whatever, it subsided to a great amount.

> And, you know, later on, I had to take him out of the intake area and put him back to his jumpsuit and take him back to his unit. And he was -- while we were transporting -- while I was transporting him to the -- his unit, he was telling me, I don't want to get a no show because, you know, I was not feeling well at that time. I told him, I guess I'll let the courts know that, you know, you are not feeling well at that time.
>
> Then when the sheriffs were ready to take you. And we did what we had to do from the medical side to make sure you are not COVID positive or anything like that. So that's it -- all I have to tell you at this time.

The prosecutor asked Sergeant Mathew whether he had seen the appellant vomit during his coughing fit. Sergeant Mathew replied, "No, I did not." This led to the following exchange:

> [PROSECUTOR]: As someone that interacted with him face-to-face during that time period, did it appear that his symptoms changed rapidly once the sheriffs approached him to bring him to court? In other words, was he exhibiting those same symptoms prior to the sheriffs approaching him?
>
> SERGEANT MATHEW: No.
>
> [PROSECUTOR]: And was your perception as somebody that was present with him during the interaction -- were you able to form a perception as to whether or not the symptoms were genuine or they appeared to be feigned?
>
> SERGEANT MATHEW: As far as I'm concerned, once sheriffs left, he was not showing that kind of symptoms. And while I was coming into work, I was passing the area where he was staying and I didn't hear anything. This all of a sudden happened while they were about to put the restraints on.
>
> [PROSECUTOR]: And after he was returned from medical, he appeared to be exhibiting very few of the same symptoms?
>
> SERGEANT MATHEW: Yes. I walked him all the way from here to his unit where he stays and I didn't even hear of one time he's coughing at that time.

The court then continued examining Sergeant Mathew:

THE COURT: About how long did you observe him [i.e., the appellant]?

SERGEANT MATHEW: He was, like -- I would say, like, five to seven minutes probably he was continuously coughing while they were about to put the restraints on. So they didn't put the restraints on, as he was trying to -- you know, he was not seeming to be not feeling well. So then we had to make sure that, you know, he's not, like, contracted any COVID or anything. So we had to take him away from the intake area to the medical department.

I didn't go with him to the medical department, but some of my -- some of my officers did. And I did attach a COVID negative results to all, which I got from the medical department.

THE COURT: Okay. No, I do have -- I do have the negative COVID results. I just -- I'm just trying to get information from you about his condition that you were able to observe before the transport got there. And then when you left with him -- or to take him back out of the intake area.

SERGEANT MATHEW: Right. I came in, like, 8 o'clock and the sheriffs were already here by that time, because that's the time I start my duties here at commitment, 8 to 4. So when I came in, the sheriffs were already here. When I passed, he was sitting in an area where I couldn't hear any cough or anything. Everything was totally normal.

The sheriffs were putting restraints on the other inmates. And while I was here, while him being the last to put the restraints on, then all of a sudden, you know, I can see continuous, like, two, three minutes of coughing from [the appellant].

So then we were checking on to see what's going on. Then he continued again, so nonstop. So the sheriffs did not put any restraints on. So that's why we had to take him to the medical department.

Once he came down, the sheriffs already left with other people. And I had to tell him that now, you know, the sheriffs are gone because they waited all this time. So then, you know, that's the time he had a conversation with me saying, I don't want the judge to feel that I don't, you know, want to go to court or something. I said, that's not something I had to that. You know, I'm going to provide the information what I know.

> And when I changed him back to his regular jumpsuit and walked him to his unit, he was perfectly normal to me. And that's all, you know, my observation, Your Honor.

The prosecutor ascertained from Sergeant Mathew that the appellant "went back to wherever his room or dorm is without any other medical intervention[.]" That concluded the examination of Sergeant Mathew.

After hearing argument from the prosecutor, the court made factual findings and ruled that the appellant was voluntarily absent from trial that day. The court explained as follows:

> All right. Thank you. I mean, what's -- if [the appellant] is or was legitimately sick, I clearly would have no problem continuing this matter until Monday. But what causes the Court concern is the behavior and the continual requests to postpone this matter, to continually delay the matter on -- you know, and for a variety of reasons.
>
> As I mentioned it yesterday, you asked the first day that the Court not find [the appellant] -- the Court find [the appellant] not credible. And, in a sense, is he trying to manipulate the court, manipulate the proceeding, and the process.
>
> For example, with respect to the toothache and the extraction of the tooth, when he was here on December 9th, Friday, he told this Court he had dental surgery that was supposed to take place the day before on the 8th, but he wouldn't be able to talk, he wouldn't be able to do anything for a couple of weeks. So he didn't have it.
>
> Then when I denied the request for postponement, then he says he's supposed to have dental surgery on yesterday, which is the 15th, and how he's in pain, et cetera. And then when I mentioned that to him yesterday, because when my assistant contacted the detention center and learned that he doesn't have any dental procedures scheduled and has no extractions planned and is only prescribed antibiotics and ibuprofen, then [the appellant] changes the story to say the security person was going to tell the dentist to do the extraction, either that Thursday, the 8th, or it would have been yesterday, which is the 15th.

But then -- so he's manipulating this to -- either manipulating the Court or to try to delay this process even more. That's why this Court is struggling with what is the appropriate thing to do, because as I warned him, that just by his behavior, he's trying to cause a mistrial.

He wants to do what he can to try to, either get a mistrial or, if he's convicted, to try to get some kind of appeal, because the Court did not do something the right way. I'm trying to protect his due process rights. And I know he wants to present a defense. And he has a whole slew of witnesses he wants to call.

And I do note, at least two or three times, within the past couple of days, he talked about how he's going to present what I say a vigorous defense. And he's going to say what he wants to say. As I always cautioned him, subject to whatever objections and rulings by this Court, and whatever objections to whatever witnesses there may be and rulings.

But his -- and clearly, based on Deputy Tuggle, as well as Sergeant Mathew, it appears to this Court that when they get there to actually bring him here is when he went into this coughing fit. And then he goes to medical, but then he's still saying, oh, I don't want the judge to think I don't want to participate or be there, but then he seems to be fine once they leave. And as you said, when [Deputy] Tuggle said, well, we'll wait and that's when you said, well, no, he's not going.

So I also do note that [Deputy] Tuggle had some reservations in and of itself because he would have been in the van with other people who may not have wanted to be around [the appellant], especially without taking a COVID test and refusing a COVID test, but it never even got to that point.

And the other question is, how many times am I supposed to send or get word to [the appellant] to have -- to bring him to court to have him participate? I did it the first day, and he refused to sign the form. So it gets to the point where this just has to end, meaning the Court continuing, encouraging, or trying to bring [the appellant] to court.

So I do find that [the appellant] is voluntarily absenting himself from today's proceeding. And I cannot say with any degree of certainty that he truly was ill. This is another delay tactic. The Court began this case trying him in absentia. Absentia, excuse me. And so he is voluntarily absenting himself. So we are going to continue with his case today without his presence here.

The trial resumed. The prosecutor called four witnesses and introduced into evidence fourteen exhibits and a redacted version of the appellant's recorded testimony from the NCR phase of the first trial, which was played for the jury. As noted, in his testimony at the first trial, the appellant admitted that he had killed his parents. The proceedings then concluded until Monday, December 19, 2022.

When the trial resumed on Monday morning, the appellant was present. The State rested its case. The appellant then addressed the court, asking that trial be postponed for a week:

> First, Your Honor, I have a motion that I would like to present to you and turn into the clerk of courts before we proceed any further. In addition to that, I am prepared today to call witnesses to the stand and so forth and start to make my case. But at the same time, I'm not nearly as prepared to make my case as I would like to be to continue.
>
> You know, I was going to ask for some time to get things in more order if we continue to proceed. And I was thinking that since the jury is already going to be here today, you know, either if Your Honor would grant me some time to get things in order so I could start to make my case Monday and the jurors and the Court could have the Christmas week off, be able to, you know, get things in order with their family and, you know, be able to spend Christmas with them.
>
> Also, Friday is a federal holiday now because Governor Hogan has, you know, implemented that, so we won't have Friday. You know, I imagine it will take me at least four or five days to make my case as the State has had. You know, if we were to start Monday of next week,[10] I'd have enough time to get everything in order and, you know, we could make -- I could make my case in four days and we could have closing arguments Friday.
>
> You know, these are just my thoughts. I have no idea what you're going to be willing to, you know, grant or, you know, allow. But I'm just

[10] The Monday to which the appellant was referring, December 26, 2022, was a federal holiday on which the courts would be closed.

> putting my thoughts out there on the record so that, you know, you understand what my thoughts are. So, you know, at this time, I would like to turn in a motion to the Court that I have typed up. I would like to ask Your Honor if we're going to proceed forward, that I have till Monday.
>
> * * *
>
> You know, also, just, Your Honor, keep in mind that it is Christmas week. There's a lot of people that wanted to be a part of this trial that have very valuable information that was not presented at the first trial that should have been. And, you know, me, my supporters, loved ones, family members, key witnesses all feel that, you know, that should be a part of trial. You know, that without that, it's an -- it's not a fair trial. You know, and that the jury should be able to hear and consider, you know, what these witnesses have to say.
>
> The State had two weeks before Christmas to start making their case, where it was more convenient for people. You know, this week, obviously, with the holiday coming up, Christmas on Saturday,[11] you know, the day off on Friday[12], you know, the travel, you know, the airfare, everything that's just going on right now. And it would be much more convenient to be able to call all of the witnesses I wanted to call by next week and also have the exhibits more organized -- okay -- by Monday of next week.
>
> So I would really like to start making my case Monday of next week.[13] I'm prepared to make it today because, again, you know, I can't -- I can't control, you know, what decisions you're going to make. I can only let you know my thoughts.

The court summarily denied the appellant's postponement request, remarking:

> We were here on Friday, you -- or was it Thursday? I think you even asked Thursday to have the weekend to prepare your presentation to this jury. And I said I would rule on that later on. And so by you not appearing on Friday, you've pretty much had the weekend to prepare your case.

[11] In fact, in 2022, December 25 fell on a Sunday.

[12] Friday, December 23, 2022 was not a holiday.

[13] Again, Monday of the following week, December 26, was a federal holiday.

The appellant further addressed the court:

> Okay. And, Your Honor, at this time, I just want to put on the record that I did want to be here Friday. That Jan Rivera (phonetic) did come to the detention center in order to drop off notebooks, folders, things for me to be able to prepare over the weekend, as I requested. And she was not allowed to do so. So I did not have time to, you know, get those things into their proper folders and get the exhibits as organized as I think that they should be to display to a jury.
>
> And also at this time, I'd like to present my motion [for mistrial] to the Court. Give Your Honor a copy. [The prosecutor] a copy. The clerk of courts a copy. Clerk a copy. And I'd like to allow Your Honor and [the prosecutor] -- I'd like to ask you to read it and go from there.

The appellant continued, saying that

> for me to present my case, to use all of the facts, witnesses, and evidence to make my case, you know, I really do feel that I need additional time. And, you know, I just want to put that on the record.
>
> You know, I ask that if my request to start back up Monday wasn't considered, that I at least have a day or two to do that. And I'd just like to make that request, even if it's going to be denied, I'd like to put it on the record.

The court replied, "It's already denied."

The appellant's written motion for mistrial summarized his reasons for not appearing on December 12, 2022, his recurring complaints about his clothing, grooming, and medical care (he repeated his claim of an abscessed tooth), and his reasons for not appearing for trial on Friday, December 16, 2022. In the motion, the appellant stated, "Due to 'Covid protocol', I was not transported to day five (5) of my trial on the 16th of December, through no fault of my own." He further complained that he had been denied his right to counsel, his right to self-representation, and his right to meaningfully participate in the proceedings, and that the trial judge was biased against him.

The next morning, Tuesday, December 20, 2022, the trial court heard argument on the mistrial motion and denied it.

***

The appellant contends the trial court erred by ruling that he voluntarily absented himself from trial on Friday, December 16, 2022. According to the appellant, the "record did not support the court's finding that [he] voluntarily absented himself on December 16 by feigning illness." He asserts that the trial court appeared to misapply controlling precedent[14] and therefore erred in choosing to hear only from correctional officers and not from the appellant himself or from medical staff; and he further asserts that the officers' "proffers did not meaningfully resolve whether [he] faked symptoms to delay proceedings." In the alternative, the appellant asserts that the trial court erred by failing to conduct an evidentiary hearing when, on Monday, December 19, 2022, he appeared in court and "proffered that he missed transport [the previous Friday] because of a genuine medical issue involving a tooth abscess."

The State counters that the trial court "acted within its discretion when it found that [the appellant] was malingering and proceeded with the trial in his absence." According to the State, the trial court properly applied the two-part test mandated by Maryland case law in finding that the appellant was aware of the time and place of trial and that his absence was knowing and deliberate; and in balancing the appellant's right to be present with the need for the orderly administration of justice. Finally, the State maintains that the trial court

[14] *Pinkney v. State*, 350 Md. 201 (1998).

did not err by failing to consider the appellant's explanation, made on December 19, 2022, for his failure to appear on December 16, 2022, for the simple reason that "the court did allow [the appellant] to address his absence."[15]

***

"In Maryland, a criminal defendant has a common law right to be present at all critical stages of the trial." *State v. Hart*, 449 Md. 246, 264 (2016). In furtherance of that right, the Supreme Court of Maryland adopted Rule 4-231, which applies to criminal proceedings and states in relevant part:

> (a) **When presence required. —** A defendant shall be present at all times when required by the court. A corporation may be present by counsel.
>
> (b) **Right to be present—Exceptions. —** A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.
>
> (c) **Waiver of right to be present. —** The right to be present under section (b) of this Rule is waived by a defendant:
>
> (1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or
>
> (2) who engages in conduct that justifies exclusion from the courtroom; or
>
> (3) who, personally or through counsel, agrees to or acquiesces in being absent.

[15] The State maintains that, during argument on his motion for mistrial on December 20, 2022, which was the appellant's final opportunity to explain his absence on December 16, 2022, the appellant "did not address his supposed illness on December 16, 2022." However, the appellant did say during that argument that "Sergeant [Mathew] would be willing to verify that I wanted to come to court and wasn't unable [sic] to." We infer that the appellant was asserting that Sergeant Mathew would corroborate his story that he had been ill and missed the transport to court through no fault of his own.

In the case at bar, the issue is whether the record is sufficient to support the trial court's finding that the appellant was voluntarily absent, within the meaning of Rule 4-231(c)(1), on December 16, 2022, and therefore waived his right to be present that day. The court heard testimony from a correctional officer and a sheriff's deputy, both of whom interacted closely with the appellant on the morning of December 16. Both officers testified consistently that it appeared to them that the appellant was feigning illness to avoid being transported to court. Furthermore, prior to trial, the court had listened patiently as the appellant repeatedly sought postponements so that he could better prepare his case; and after those motions were denied, the appellant refused to appear on Monday, December 12, the first day of trial. The court was well aware of this pattern of behavior by the time it found that the appellant had voluntarily absented himself from trial on Friday, December 16.

When the appellant appeared in court again, on Monday, December 19, he asked the court to postpone the trial for an entire week to give him more time to prepare his defense. In his written motion for mistrial, the appellant asserted that he had been absent on December 16 because of "Covid protocol," a claim the trial court clearly found not credible given that it was contrary to the testimony of Deputy Tuggle and Sergeant Mathew.[16]

[16] The appellant complains that, in its memorandum of December 12, 2022, regarding the appellant's absence from court that day, the court quoted from the dissenting opinion in *Pinkney*. In fact, the trial court first quoted from the majority opinion in *Pinkney*, 350 Md. at 216 ("In determining whether a defendant's absence is truly voluntary, many (continued…)

The trial court had an extensive factual record to support its finding that the appellant was voluntarily absent on December 16. Nothing the appellant said thereafter, either orally or in writing, created any basis to doubt what the court already had concluded on December 16. As the trial court remarked, it was "clear" that, "based on [the appellant's] conduct and behavior during this trial[,]" the appellant was "doing what he can to not have this case go forward, or to result in some kind of mistrial, or some favorable outcome on appeal, if he is convicted[.]" The trial court neither erred nor abused its discretion in refusing to reward the appellant for his repeated attempts to sabotage the proceedings.

III.

The appellant took the witness stand on the final two days of trial. On the penultimate day, he testified that associates of his erstwhile girlfriend, Savannah Bentley, murdered his parents. On the next and final day of trial, the prosecutor cross-examined the appellant extensively and then moved to impeach him with his prior conviction for solicitation to intimidate or influence a juror:

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trial courts have prudently taken investigatory measures before finding a waiver[.]"). Then the court appeared to recite part of the dissenting opinion in *Pinkney*, stating:

> Trial courts should not be burdened with the requirement to take evidence or some type of inquiry into the defendant's absence. Voluntary absence may be inferred from a defendant's failure to appear for trial if he or she has notice of the time and date of the trial.

Compare Pinkney, 350 Md. at 243 (Cathell, J., dissenting). The trial court did precisely the opposite of what the *Pinkney* dissent suggested, however. It made inquiries with the detention center and held an evidentiary hearing at which a sheriff's deputy and a correctional officer testified. In addition, the court afforded the appellant several opportunities to explain his absence.

> And the third issue is, Your Honor, as you know the [appellant] plead[ed] guilty to solicitation to intimidate or influence -- or influence a juror by corrupt means as a result of the last trial -- as a result of what occurred during the last trial. He entered a guilty plea and went to sentencing on February 8th, 2018, for that offense. I believe that offense to be an impeachable offense, one that when the [appellant] testifies on redirect it would be permissible for me to both confront him and then introduce a true test copy of that conviction.
>
> I read Rule 5-609 to require Your Honor to find that the crime is either an infamous crime or other crime relevant to the witness's credibility and make a secondary finding and the Court determines that the probative value of admitting the evidence outweighs the danger of unfair prejudice to the Witness or objecting party. So I wanted to do that outside the presence of the jury and ask the Court to make a ruling one way or another so that I didn't misstep and attempt to use it improperly in the presence of the jury, Your Honor.

The appellant objected, asserting that his prior counsel had been ineffective. The court overruled his objection, stating:

> So I am going to make the finding it's not an infamous crime, but it does go to your credibility and it's for the jury to determine. So yes, that can be introduced when you sit here and talk.

Thereafter, the prosecutor impeached the appellant, as follows:

> [PROSECUTOR]: Isn't it true that you were convicted of solicitation to corrupt -- by corrupt means to influence a jur[or] in discharge of his official duty for conduct that occurred on or about September 21st, 2017?
>
> [THE APPELLANT]: It was the charge, but all I did was ask one of the 78 people I put on the witness list to tell the jury I was innocent because no one was getting to testify. That's all I did. I didn't think that that was fair. None of those 78 people got to testify.
>
> * * *
>
> That's all I did. That's what this is all about. That's the only thing I did and they charged me with this. I didn't think that that was fair. When 78 people want to testify, it's for a reason.

[PROSECUTOR]: In March of 2018, you entered a guilty plea to that count, is that correct?

[THE APPELLANT]: The same public defender that I had, that did not subpoena my phone records, which I'd like the jury to see --

THE COURT: Mr. White, please --

[THE APPELLANT]: Yes, it's true.

THE COURT: -- respond to the question.

[PROSECUTOR]: (Indiscernible at 2:41:50 p.m.)

[THE APPELLANT]: I had the same public defender I was misrepresented by and was urged --

THE COURT: So it was either a yes or a no.

[THE APPELLANT]: It's a yes, Your Honor.

THE COURT: Thank you.

The prosecutor then moved into evidence a true test copy of the appellant's 2018 conviction, which showed that on March 8, 2018, in Case No. 13-K-l7-058375, he pleaded guilty to one count of solicitation to intimidate or influence a juror, in violation of Maryland Code, Criminal Law Article ("CR") § 9-305(b), for which he was sentenced to five years' imprisonment.

***

The appellant contends the trial court erred by allowing the State to impeach him with his prior conviction for soliciting the intimidation of a juror. According to the appellant, such a conviction is an "offense[] that might *theoretically*" but not necessarily "involve dishonesty" and thus is ineligible for impeachment. He maintains that "the wide

range of prohibited modes and purposes under § 9-305(b) do not 'clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief.'" (Quoting *Rosales v. State*, 463 Md. 552, 572 (2019).) And furthermore, he asserts, even if his prior conviction is probative of credibility, allowing the prosecutor to impeach him with that conviction was unfairly prejudicial.

The State counters that this issue is unpreserved because the reason the appellant gave to exclude the evidence in question at trial was different than the reason he gives on appeal; and when the evidence was introduced at trial, he did not renew his objection. On the merits, the State maintains that the prior conviction, which is akin to obstruction of justice, "is both an infamous crime and is relevant to credibility." The State further asserts that even if the prior conviction is not for an infamous crime, it is "clearly relevant to credibility, as it shows a dishonest attempt to improperly influence the outcome of trial." As for the appellant's argument that admitting his prior conviction was unfairly prejudicial, the State counters that all five factors the court was required to weigh favored its admission.

***

Three rules come into play in determining preservation. Rule 4-323 provides in relevant part:

> (a) **Objections to evidence. —** An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs. The court shall rule upon the objection promptly. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court may admit the evidence subject to the introduction of additional evidence sufficient to support a finding of the fulfillment of the condition. The objection is waived unless, at some time

> before final argument in a jury trial or before the entry of judgment in a court trial, the objecting party moves to strike the evidence on the ground that the condition was not fulfilled.
>
> Rule 5-103 provides in relevant part:
>
> (a) **Effect of erroneous ruling. —** Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and
>
> (1) **Objection. —** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was requested by the court or required by rule[.]
>
> * * *
>
> Finally, Rule 8-131 provides in relevant part:
>
> (a) **Generally. —** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by an appellate court whether or not raised in and decided by the trial court. Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

In the case at bar, the appellant took the position at trial that he should not be impeached with his prior conviction because his counsel was ineffective and had induced him to enter an NCR plea. On appeal, he argues that the prior conviction was not an impeachable offense and, even if it were, presenting it to the jury was unfairly prejudicial. There is authority holding that, under such circumstances, the claim of error is waived. *See, e.g.*, *Klauenberg v. State*, 355 Md. 528, 541 (1999) (stating that "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal").

On the other hand, the prosecutor expressly invoked Rule 5-609, which governs the admissibility of prior convictions for impeachment purposes, and specifically asked the court to "determine[] that the probative value of admitting the evidence outweighs the danger of unfair prejudice to the Witness or objecting party." Moreover, in ruling, the trial court stated that it was admitting the prior conviction because it was probative of the appellant's credibility and was properly a matter for the jury to decide. Invoking Rule 8-131(a), the appellant maintains that his claim is "fully preserved." Under the circumstances of this case, the purpose of the preservation rule, that is, to ensure that the trial judge has an opportunity to rule on an issue and correct any error, was satisfied. Accordingly, the issue was preserved.

Rule 5-609 states in relevant part:

> (a) **Generally. —** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
>
> (b) **Time limit. —** Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.
>
> (c) **Other limitations. —** Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:
>
> (1) the conviction has been reversed or vacated;
>
> (2) the conviction has been the subject of a pardon; or

> (3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.
>
> * * *

"Whether or not a crime bears upon credibility or is an infamous crime under Maryland Rule 5-609 is a question of law[,]" which we review without deference. *Rosales*, 463 Md. at 562.

> In order to balance the probative value of information that relates to a witness's credibility on one hand, with the danger of a prior conviction igniting unfair prejudice against the defendant on the other hand, we use typically five non-exhaustive factors, namely: "(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the [current] charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility."

Cure v. State, 421 Md. 300, 325-26 (2011) (quoting *Jackson v. State*, 340 Md. 705, 717 (1995)). We review a trial court's balancing of probative value versus unfair prejudice for abuse of discretion. *Id.* at 324, 331.

Subsection (a) of Rule 5-609 "sets forth the 'eligible universe' for what convictions may be used to impeach a witness's credibility." *State v. Giddens*, 335 Md. 205, 213 (1994).[17] "This universe consists of two categories: (1) 'infamous crimes' and (2) 'other crimes relevant to the witness's credibility.'" *Id.* "Infamous crimes include treason, common law felonies, and other offenses classified generally as *crimen falsi*." *Id.* "Crimes

[17] When *Giddens* was decided, the matter was governed by former Maryland Rule 1-502. When the Maryland Rules of Evidence were codified, that rule was repealed and replaced by current Rule 5-609, effective July 1, 1994. The two rules, however, are "virtually identical[.]" *Giddens*, 335 Md. at 207 n.2.

classified as *crimen falsi* include crimes in the nature of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense involving some element of deceitfulness, untruthfulness, or falsification bearing on the witness's propensity to testify truthfully." *Id.* at 213 n.5 (citing *Beales v. State*, 329 Md. 263, 269-70 (1993)). To fall within the residual category of "other crimes relevant to the witness's credibility," the "crime itself, by its elements, must clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief." *State v. Westpoint*, 404 Md. 455, 484 (2008), *superseded by statute*, 2018 Md. Laws, chs. 362, 363 (enacting Md. Code, Courts & Judicial Proceedings Article § 10-923). A "crime tends to show that the offender is unworthy of belief, if the perpetrator 'lives a life of secrecy' and engages in 'dissembling in the course of [the crime], being prepared to say whatever is required by the demands of the moment, whether the truth or a lie.'" *Id.* (quoting *Giddens*, 335 Md. at 217).

The crime at issue is CR § 9-305(b), which provides:

> A person may not solicit another person to, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of the court of the State or of the United States in the performance of the person's official duties.

Because the appellant pleaded guilty to solicitation in connection with a crime of violence (murder in the first degree), the offense was a felony. CR § 9-305(c)(2).[18] The offense is codified at Subtitle 3 of Title 9 of the Criminal Law Article; that subtitle is

[18] Effective June 1, 2018, CR § 9-305(c)(1) was amended to increase the maximum term of imprisonment for a misdemeanor violation of the statute from five to ten years. 2018 Md. Laws, ch. 145.

captioned, "Obstructing Justice." Section 9-305(b) may be violated "by threat, force, or corrupt means," if done in an attempt "to influence, intimidate, or impede a juror[.]"[19]

Although "[s]tatutory felonies are not infamous crimes[,]" *Rosales*, 463 Md. at 572, we have no doubt that the offense to which the appellant pleaded guilty qualifies as a "crime relevant to the witness's credibility" within the meaning of Rule 5-609(a). We disagree with the appellant's assertion that "the wide range of prohibited modes and purposes under § 9-305(b) do not 'clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief.'" (Quoting *Rosales*, 463 Md. at 572.) Every way of committing this offense evinces a corrupt intent to interfere with the judicial process, and a conviction for this offense, as the State asserts in its brief, is "clearly relevant to credibility, as it shows a dishonest attempt to improperly influence the outcome of trial." *See, e.g., United States v. Montgomery*, 390 F.3d 1013, 1015-16 (7th Cir. 2004) (concluding that a prior conviction for "obstruction of justice based on [the defendant's] lying about his age and allowing himself to be prosecuted as a juvenile when he was an adult" was probative of his truthfulness and was properly admitted for impeachment).

We find no merit in the appellant's assertion that a violation of CR § 9-305(b) is merely "*theoretically*" a crime involving dishonesty and does not meet the threshold for admissibility. On the contrary, it would be exceedingly rare that a person convicted of violating CR § 9-305(b) was *not* acting out of a dishonest motive. *See, e.g.*, *Rosales*, 463

[19] It is undisputed that the solicitation in Case No. 13-K-l7-058375 concerned a juror in the appellant's first trial in this case.

Md. at 579 ("While some racketeering activity under § 1961 may not qualify as an infamous crime or be otherwise relevant to a witness' credibility, on balance, the great majority of enumerated offenses meet these criteria."); *Giddens*, 335 Md. at 218 ("Although, in theory, some activity that falls within the definition of drug distribution would not be probative of an individual's lack of veracity, the vast majority of convictions for cocaine distribution are relevant to credibility."). Although it is theoretically possible to violate CR § 9-305(b) by soliciting the intimidation of a juror without having a dishonest motive, in the vast majority of cases the offender *is* motivated by a dishonest desire to thwart a judicial proceeding. We hold that the appellant's conviction for solicitation to intimidate a juror falls within the "eligible universe" of offenses under Rule 5-609(a).

We next consider the "five non-exhaustive factors" typically used to weigh probative value against unfair prejudice. *Cure*, 421 Md. at 325. The impeachment value of the prior crime, solicitation to influence a juror in the performance of the juror's duties, is high because it is probative of the appellant's credibility. The second factor, the point in time of the conviction and the appellant's subsequent history, also weighs in favor of admissibility because the conviction was recent. The third factor, the similarity between the past crime and the current charged crime, weighs in favor of admissibility because the past crime and the current crime, although having a common procedural nexus, are distinct offenses, and there is no danger that the jury was exposed improperly to propensity evidence. The fourth and fifth factors, the importance of the appellant's testimony and the centrality of his credibility, also weigh in favor of admissibility. In sum, we hold that the

trial court did not abuse its discretion in permitting the prosecutor to impeach the appellant with his prior conviction.

IV.

As noted previously, jury selection was conducted without the appellant's presence or participation because he refused to be transported to the courthouse on the first day of trial.[20]

During general questioning of the venire, Juror No. 2 responded affirmatively to the questions whether any of the venirepersons were related to or acquainted with any witnesses and whether any of them had ever been employed by or associated with a law enforcement agency. Later, Juror No. 2 was called to the bench for individual questioning about those positive responses. No problem was uncovered respecting either response. At the end of the colloquy, Juror No. 2 made the following unprompted remark:

> JUROR NO. 2: . . . Can I just add one last thing?
>
> THE COURT: Yes.
>
> JUROR NO. 2: If you're done with that. You made mention the third to the last question if, it sort of dawned on me as I was sitting there, regarding instructions given to the jury, I think was your third to the last question, instructions to the jury,[21] how that would impact my vote. Anything I have

[20] Also as noted, the appellant does not argue that the trial court erred or abused its discretion in finding that he was voluntarily absent on Monday, December 12, 2022, when the jury was selected.

[21] Juror No. 2 was referring to the following question propounded by the trial court:

> Does any member of the panel feel you cannot return a fair and impartial verdict based solely upon the evidence presented in this courtroom

(continued…)

> to say is as long as it complies with Maryland State Constitution, especially Article 23. I'm good. Where it says that the jurors are to be the judges of the law, then I'm good.

Neither the trial court nor the prosecutor said anything in response to that impromptu remark. The prosecutor briefly posed a follow up question about Juror No. 2's possible acquaintance with one of the witnesses.

Juror No. 2 ended up being selected to serve on the jury and subsequently was appointed the foreperson.[22]

In the instructions after the close of the evidence, the trial court included verbatim the Maryland pattern jury instruction on the binding nature of the instructions, which states, in relevant part: "The instructions that I give about the law are binding upon you. In other words, you must apply the law as I explain it in arriving at your verdict."[23] After closing arguments, the jury was given a written copy of the instructions, including the one on the

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> and the law as instructed by the Court, even if you disagree with those instructions?

[22] Juror No. 1 had been stricken for cause. The next day, when the jury was sworn, Juror No. 2 was re-designated as Juror No. 1.

[23] Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") (MSBA 2d ed. 2012) 2:00A provided:

> Members of the jury, the time has come to explain the law that applies to this case. The instructions that I give about the law are binding upon you. In other words, you must apply the law as I explain it in arriving at your verdict. On the other hand, any comments that I may have made or may make about the facts are not binding upon you and are advisory only. You are the ones to decide the facts and apply the law to those facts.

The 2024 edition, published after the date of trial in this case, is identical.

binding nature of instructions, to consult during deliberations. The jurors deliberated approximately two and a half hours before returning their verdict.

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The appellant contends the trial court erred in failing to strike Juror No. 2 for cause, for expressing his belief that the Maryland Constitution makes jurors the judges of the law. Recognizing that no objection was made, he asks us to recognize plain error, as the court's failure to strike Juror No. 2 violated his right to a fair and impartial jury. He asserts that all four factors relevant to recognizing plain error weigh in favor of reversal.

The State counters that "the juror's comments did not necessarily require his removal from the panel as they did not indicate bias." Moreover, according to the State, the trial court's correct instructions on the law cured any possible prejudice that may have resulted from seating Juror No. 2.

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Plain error is reserved for '"blockbuster"' errors. *Martin v. State*, 165 Md. App. 189, 196 (2005) (cleaned up) (quoting *United States v. Moran*, 393 F.3d 1, 13 (1st Cir. 2004)), *cert. denied*, 391 Md. 115 (2006). It is a "rare" phenomenon. *Morris v. State*, 153 Md. App. 480, 507 (2003), *cert. denied*, 380 Md. 618 (2004). We apply a four-part analysis in determining whether to exercise our discretion to address an unpreserved error under the plain error doctrine: 1) there must have been an error, that is, a deviation from a legal rule, that has not been affirmatively waived; 2) that error must have been plain, that is, clear or obvious, and not subject to reasonable dispute; 3) the error must have affected the defendant's substantial rights, that is, that it affected the outcome of the proceedings; and

finally 4) if those prongs are satisfied, we may exercise discretion to remedy the error if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Rich*, 415 Md. 567, 578 (2010). The burden is on the appellant to demonstrate prejudice. *Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Olano*, 507 U.S. 725, 734 (1993).

We agree with the appellant that at a minimum the trial court should have followed up with Juror No. 2 after his impromptu remark and, if Juror No. 2 had persisted in his belief that jurors are the judges of the law, stricken him for cause. Under the unusual circumstances of this case, the prosecutor would have been wise to have moved to strike Juror No. 2, although the prosecutor's inaction is, of course, not legal error. *See, e.g.*, *Myers v. State*, 243 Md. App. 154, 184-85 & n.2 (2019) (explaining that only the trial judge can commit error), *cert. denied*, 467 Md. 276 (2020). Although it is difficult to tell from the cold record, the lack of any response to Juror No. 2's comment suggests the trial judge and the prosecutor were otherwise distracted from what that juror was saying. In any event, a prospective juror who, after being advised that the Maryland Constitution no longer is interpreted to mean that jurors are the judges of the law, continues in that notion, should not be seated on a jury.

With respect to waiver, however, we begin with the observation that the appellant voluntarily absented himself from the proceedings on the day of jury selection. That absence was compounded because, as explained, the appellant had validly waived counsel, so there was no defense counsel present when the error occurred either. But the appellant's complaint that he "was not present for jury selection, and, therefore, no defense advocate

was present to object[,]" is wide of the mark, because that unfortunate situation was entirely of his own making. Under these circumstances, the appellant affirmatively waived his claim of error in the conduct of voir dire, and therefore, plain error review is unavailable.

Even if we were to excuse the appellant's waiver, however, we would conclude that plain error relief is not appropriate here. Although the error the appellant complains about is plain, he has not demonstrated that it affected his substantial rights, that is, that it affected the outcome of the proceedings.

Importantly, the trial court properly instructed the jury, verbatim, with the appropriate pattern jury instruction MPJI-Cr 2:00A ("Binding Nature of Instructions"), and a written copy of that instruction was sent to the jury room at the beginning of its deliberations. We disagree with the appellant's assertion that the present case is analogous to those in which a trial court gave advisory-only jury instructions. Here, the trial court gave a correct instruction that was *not* advisory.

Ramirez v. State, 464 Md. 532 (2019), is more analogous. Although *Ramirez* was a postconviction proceeding, not a direct appeal, it is in other respects comparable to this case: as here, in *Ramirez*, there was an unpreserved error that permitted a potentially biased juror to be selected for the panel. 464 Md. at 539-40. The Supreme Court of Maryland rejected Ramirez's contention that prejudice should be presumed, and further concluded that Ramirez could not show that there was a reasonable probability of a different outcome but for his trial counsel's error in failing to object to the potentially biased juror, "given that the State offered strong—indeed, overwhelming—direct and circumstantial evidence

of his guilt." *Id.* at 541.[24] Here, too, the State presented overwhelming evidence of the appellant's guilt, including DNA and other forensic evidence, and his own testimony from the first trial, in which he had admitted guilt.

Another reason militating against noticing plain error is the jury's behavior during deliberations, which the Supreme Court has said should be considered in determining whether a preserved error is harmless, *Dionas v. State*, 436 Md. 97, 111 (2013), and therefore may also be considered in determining whether, in the absence of the unpreserved error in this case, there is a reasonable probability of a different outcome. The written instructions the jurors took to the deliberation room plainly directed that they were to apply the law as given to them by the court. At no time did any juror inform the court that Juror No. 2, or any other juror, urged upon the jury that they were to decide the law for themselves, i.e., that they were the judges of the law.[25] And finally, after a trial that lasted eight days and in which more than 150 exhibits were received in evidence, the jury took

[24] We further note that the prejudice standard applicable to a postconviction claim of ineffective assistance of counsel is substantially similar to the prejudice a defendant must demonstrate to prevail on a claim of plain error. *See, e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 134-35 (2018) (equating prejudice under plain error review—that the error must have affected the defendant's substantial rights—with the *Strickland* "reasonable probability" standard applied to ineffective assistance claims); *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016) (same); *United States v. Dominguez Benitez*, 542 U.S. 74, 76, 83 (2004) (same). The only significant difference is that in a postconviction proceeding, there may be an opportunity to develop a larger factual record. *Dominguez Benitez*, 542 U.S. at 83 n.9. But on the record before us, the appellant has failed to demonstrate a reasonable probability of a different outcome, had Juror No. 2 not been seated on the jury.

[25] The only time the jury communicated with the court during deliberations was to ask to see a knife that was used as the murder weapon.

less than three hours to reach its verdict, indicating it had little difficulty making its decisions. Having thoroughly reviewed the extensive record in this case, we cannot say that this is a case "of truly outraged innocence" that "call[s] for the act of grace of extending gratuitous process." *Morris*, 153 Md. App. at 523 (cleaned up). Under all these circumstances, we decline to notice plain error.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS ASSESSED TO THE APPELLANT.