Circuit Court for Anne Arundel County
Case No. 02-K-14-002525

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1029

September Term, 2020

LOUIS JARRARD BYNUM

v.

STATE OF MARYLAND

Berger,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 10, 2021

In 2015, a jury in the Circuit Court for Anne Arundel County convicted appellant, Louis J. Bynum, of sexual abuse of a minor and 11 counts of third-degree sexual offense. The trial court sentenced Bynum to a total of 58 years in prison, suspending all but 25 years. In his timely appeal,[1] he asks us to consider the following questions:

> I. Whether the circuit court violated Md. Rule 4-215 by not inquiring further into Appellant's reasons for wanting to discharge counsel.
>
> II. Whether the circuit court erred by not allowing the defense to elicit relevant testimony from one of the State's main witnesses.

For the reasons that follow, we will affirm the judgments of the trial court.

BACKGROUND

In 2012, Bynum worked as a dance ministry instructor at a church in Baltimore. He was assisted by T.B., whose 11-year-old daughter, S.B-L., was one of Bynum's dance students. Bynum and T.B. began dating, and they were married in the spring of 2013. After the birth of their son P.B. in July 2013, Bynum stayed home to care for the infant, while trying to start his own business, and T.B. worked outside of the home.

One night in June 2014, P.B. developed a high fever that would not abate, so T.B. took him to the hospital, leaving S.B-L. home alone with Bynum. According to S.B-L.,

[1] Bynum initially filed his notice of appeal on June 25, 2015. On November 16, 2015, this Court dismissed his appeal for failure to file a brief. On December 2, 2019, Bynum filed a *pro se* request for appeal, explaining that correspondence relating to his appeal had been mis-directed in 2015 and never received. By order entered November 13, 2020, the circuit court granted Bynum permission to file a belated notice of appeal within 30 days. He timely filed his notice of appeal the same day.

while her mother was gone, Bynum undressed her, kissed her, touched her breasts and buttocks, and tried to entice her to touch his penis.

Bynum's sexual touching of S.B-L. continued throughout the summer of 2014, mostly on occasions when T.B. was at work. Bynum told S.B-L. that her mother would be angry at both of them if she found out about the touching, so S.B-L. kept it secret until September 11, 2014.

On that evening, S.B-L. was again home alone with Bynum. As they watched a movie on the living room couch, he locked the front door and returned to the couch to grab her ankles and pull her on top of him. He removed both their clothes and touched her breasts, vagina, and buttocks and rubbed his penis against her vagina until he ejaculated.

T.B. returned home then, and Bynum told S.B-L. to run to her bedroom and pretend that nothing had happened. She ran, leaving her shirt and bra on the couch, hoping her mother would see them and understand what had happened. As T.B. entered the apartment, she saw S.B-L., with a bare back, running to her room and the child's shirt and bra on the couch. As she entered her daughter's room, she found S.B-L. in the closet buttoning her shorts, wearing no shirt. S.B-L. then told her mother what Bynum had been doing to her.

T.B. furiously confronted Bynum and kicked him out of the home. He denied the touching to T.B. and the police, but through a series of text messages, later apologized and asked for forgiveness for his sins, claiming he was "lost" and "very remorseful."

After showering and changing her clothes, S.B-L. was taken to the hospital on September 12, 2014 for a sexual assault forensic exam.[2] She also provided a statement to Noreen Startt ("Startt"), a Department of Social Services social worker, while a detective observed from another room.

Initially, S.B-L. said, she told Startt that she had not touched Bynum's penis because she "didn't remember all the details." She also acknowledged telling Startt that Bynum had only ever touched her breasts and buttocks with his hands and that if he tried to touch her "too far down," she would slap his hand away and he would stop. In court, however, she clarified that she had touched his penis and that he had touched the outside of her vagina.

S.B-L. explained that her mother and Bynum had fought a lot during the summer of 2014, mostly over Bynum's attempt to start a business, which was not going well, with money T.B. had earned. They also fought over T.B.'s suspicion that Bynum was seeing other women, which turned out to be accurate. T.B. agreed that by September 2014, her marriage was "unraveling."

Bynum testified on his behalf, denying that he had ever touched S.B-L. in a sexual manner or masturbated in front of her. On the evening of September 11, 2014, he said, S.B-L. was doing homework at the kitchen table while he was in his bedroom, showering in preparation of going to church. As he exited the shower and put on a robe, T.B. confronted him, but he denied having "every physically done anything to [S.B-L.]." He

[2] No blood, saliva, or seminal fluid was found on samples taken from S.B-L.'s person during the exam or on the underwear she had been wearing on September 11, 2014.

said the remorse he expressed to T.B., via his numerous text messages, related to his infidelity and the demise of their marriage, not because he had done anything to S.B-L.

DISCUSSION

I.

Bynum first contends that the trial court erred in failing to conduct the necessary inquiry to determine whether his reasons for attempting to discharge his attorney were meritorious. As a result, he continues, the trial court erred or abused its discretion in declining to grant his request for a postponement so he could engage private counsel.

On the first day of trial, Bynum appeared in court with his assigned public defender, Catherine Woolley. Prior to jury selection, Woolley notified the court that Bynum would like to address the court with "questions about preparation for trial." The following colloquy ensued:

> THE DEFENDANT: Yes, sir. How are you doing, Your Honor? At this present moment, I feel that Ms. Wool[l]ey has not prepared adequately towards this case and the situations. We discussed some things that during the several months that I had requested her to look into and it has not been done and that would help me with my defense in this case. I believe that [the prosecutor] has come—I mean Ms. Wool[l]ey has just. . . gone off of more so what the State's Attorney has presented to her and without doing a solid investigation on my behalf of this—of this—these allegations, and I just—my request today is actually that she be removed.
>
> I also sent a letter to her office to her supervisor—I never got a response—two months ago, and to ask her to be removed from this case so I could seek representation elsewhere.

> So that's—I just wanted to present to the Court how I felt and how I felt about how this case is going and the investigation.
>
> THE COURT: Well, Mr. Bynum, have you, in fact, sought representation elsewhere?
>
> THE DEFENDANT: Yes. I've been seeking representation from the outside. My family has been trying to get the money together now for representation and—so I was hoping they would be in here today, you know, to let me know what's going on with that. But from my understanding that they have come—came together with the money for them to pay the lawyer.
>
> THE COURT: And have you filed anything prior [to] today with the court—prior to today with the court complaining about the representation you've received from Ms. Wool[l]ey or asking that she be removed as your counsel?
>
> THE DEFENDANT: Yes. I haven't—I didn't file to the courts. I filed to her supervisor. I wrote a letter to her supervisor and I never got a response and this was two months ago. I never got a response or anything from it.
>
> THE COURT: And what have you done over the last two months?
>
> THE DEFENDANT: Well, me and her have been discussing the case and I've been sharing her more details—details on things that can help my case. But again, as I said, none of these things has been approached in any way of getting or receiving information from these people that I led her to get information from.

Bynum asked the court to remove Woolley as his attorney and postpone the matter so he could obtain another attorney. The trial court sent the parties to the administrative judge to rule on the request for postponement and denied the request to remove Woolley because the trial was scheduled to begin that day, after several postponements initiated by

Bynum, and he had filed nothing with the court prior to that day asking that Woolley be removed.

When the parties appeared before the administrative judge, Bynum again explained his requests for postponement and new counsel:

> THE DEFENDANT: Well my intended request was to postpone it, yes, but at the same time to get counsel. I feel Ms. Woolley has not done a thoroughly enough of an investigation [sic] on behalf of this case—
>
> THE COURT: Uh-huh.
>
> THE DEFENDANT: --from our conversations and everything that we had been going through. I had—
>
> THE COURT: Let me interrupt you for one minute. Are you asking to discharge Ms. Woolley—
>
> THE DEFENDANT: Yes.
>
> THE COURT: --meaning to no longer have her services?
>
> THE DEFENDANT: Services, yes.
>
> THE COURT: Okay. Go ahead and explain to me why you want me to agree to that.
>
> THE DEFENDANT: Well—
>
> THE COURT: You saying she didn't do things that needed to be done?
>
> THE DEFENDANT: Well no, not just needed to be done, I fully believe that her investigation has come from the State's Attorney information.
>
> THE COURT: Uh-huh.
>
> THE DEFENDANT: And so I believe that she has not done a thorough enough investigation on my behalf—

THE COURT: What is it you want her to do that she has not done?

THE DEFENDANT: Well I asked her—I gave her several people to contact—

THE COURT: Uh-huh.

THE DEFENDANT: --and I also gave her—like for one incident it's a phone situation that keeps bothering me. In this case is a situation with two phones.

THE COURT: Let's go one at a time. Who did you want her to contact?

THE DEFENDANT: Well Mary Florville (phonetic) was one, Parson McFade (phonetic) was another, and Samantha. Well she did contact Samantha, and Samantha—she said she was gonna call Samantha back for the information but never called her back.

THE COURT: What—did they have information that's going to be helpful to your defense?

THE DEFENDANT: Yes. Yes. And also like I said, this—the thing with the two phones.

THE COURT: Uh-huh.

THE DEFENDANT: My question was several times to Ms. Woolley was have they—they had a warrant for my phone.

THE COURT: Uh-huh.

THE DEFENDANT: And one moment it's no and one moment it's yes. And then at the same time there was two phones that I needed her to check into that had the text messages on it, and—but they only submitted one phone and one group of text message for one phone. So I kept asking her about it and kept presenting it since I met Ms. Woolley about it and telling her this phone it has the information that will help this case.

THE COURT: Uh-huh.

THE DEFENDANT: She never—nothing was never done about it.

All I have received from Ms. Woolley was that one time she told me that the phone that was submitted was my wife's work phone—

THE COURT: Uh-huh.

THE DEFENDANT: --but then she told me there was a personal phone, but then the same time when you see the video and the interview you see them give over two phones, you see her give over two phones, but the police officer and at that time in the interview never—

THE COURT: Who gave over two phones, your wife?

THE DEFENDANT: My wife, yes.

THE COURT: Okay.

THE DEFENDANT: But they never took the information from the phone that was needed and necessary in that phone. And I was asking Ms. Woolley could it seems to me [sic] put in a motion or something to get that done, she told me no.

THE COURT: Okay.

THE DEFENDANT: And I just wasn't comfortable with that, because again, these things will help my case.

THE COURT: I got it.

THE DEFENDANT: So and other little things. I just don't think she prepared thoroughly enough for this.

THE COURT: Uh-huh.

THE DEFENDANT: And I just think we're going here because I've been—it been eight months now that we've been

> postponing and postponing, and it been eight months of this thing and there's nothing new on the surface of her investigation.
>
> Again, I think that she just took Ms. State's Attorney information and just say, okay, this is what it is and we gonna roll with this and she gonna figure something out. That's how I feel.

Woolley advised the court that she had "made efforts" to communicate with all the witnesses Bynum had asked her to contact. Two of them were "non-responsive," and the third did not have any information that would have been helpful to the case. In her ten or twelve visits with Bynum in the detention center, Woolley said she had discussed the issues with the witnesses with him.

Woolley further explained that only one phone had been given to the police, with its data retrieved and shared with Bynum. The second phone Bynum spoke of was found not to contain any messages prior to October 2014, and the older messages could no longer be retrieved. Nonetheless, Woolley assured the court that she had "spent a lot of time preparing" for this "extremely serious case" and had asked all the questions that needed to be asked.

The State declared itself prepared for trial, after "working extensively with Ms. Woolley," who "always seemed incredibly prepared."

The administrative judge ruled:

> THE COURT: All right. I'm not—one of the determinations I have to make, Mr. Bynum, is whether there is a meritorious reason to permit you to discharge counsel. I don't find that there is. It appears to me that Ms. Woolley has worked diligently and has explored the issues that you've raised. She

added in the fact that she's met with you 10 to 12 times at the Detention Center.

So I'm not finding a meritorious reason based on what I've heard to discharge Ms. Woolley.

Ultimately it's your decision whether you want to discharge or fire your attorney. I'll tell you I'm not inclined to postpone the case. If you decide that you no longer want Ms. Woolley to represent you, you would be forced to go forward and represent yourself. So I don't think that would be a wise choice, because I think you'd be at a significant disadvantage.

If Ms. Woolley is telling me she communicated with whatever company maintained those text messages and they're no longer available I accept what she said to me. I don't know whether they are or not, but I accept that that's what she was told.

So do you want to, you know, go forward on your own or do you want Ms. Woolley to represent you at the trial? I'm not going to continue the trial. The State is ready, the case has been postponed a number of times, it's already well beyond *Hicks*[3] I believe, so—

[PROSECUTOR]: Two days beyond *Hicks*.

MS. WOOLLEY: Two days.

THE COURT: Okay. Two full days behind *Hicks*. It's not the oldest case in the world.

Is there anything further you wanted to say, Mr. Bynum, that you didn't get a chance to say?

THE DEFENDANT: It's a lot. It's a lot, Your Honor, and—

THE COURT: Well that's not my call. I don't know whether it is or not. What's a lie?

[3] *See State v. Hicks*, 285 Md. 310 (1979).

THE DEFENDANT: I said it's a lot.

THE COURT: A lot.

THE DEFENDANT: I mean I said it's a lot—

THE COURT: Okay.

THE DEFENDANT: --that I have to say. But the simple fact again, I just wanted to get representation of counsel from the outside, which my family is working on doing.

THE COURT: Okay.

THE DEFENDANT: That's what it was.

THE COURT: Well there's sort of two issues that are interrelated here.

If you fire Ms. Woolley you're going to go to trial on your own today. I believe she's done a good job of representing you from what I've been told, and she has looked into the concerns that you raised with her.

The other concern you raise is that a lot of information she's gotten from the State. That's the way criminal cases work sometimes, is that the State is required to provide certain discovery, the defense asks for other discovery, and then that's part of the preparation for trial. The other part of the preparation is whatever you want done or whatever you expect to be done.

As far as the witnesses go, two didn't respond to her, the one that did respond to her she does not feel comfortable using as a witness, and that's a trial strategy decision that she makes.

As for issues with respect to the telephone or telephones it appears that she's explored those as well.

So you know, the case has been set for trial for a while, it's going to go forward today.

> All right. Do you wish Ms. Woolley to continue to represent you or do want to represent yourself?
>
> THE DEFENDANT: She can represent me.

Woolley represented Bynum at the trial, with no further objection.[4]

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to counsel. *Lopez v. State*, 420 Md. 18, 33 (2011) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). These constitutional guarantees encompass not only the right to assistance by an attorney, but also the right of a defendant to reject counsel and represent himself. *Id.*

Maryland Rule 4-215 implements the constitutional mandates for waiver of counsel and provides in section (e):

> 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.

[4] Bynum, through private counsel, filed a motion for new trial, based on the administrative judge's failure to find a meritorious reason to discharge Woolley and retain another attorney. The trial court denied the motion.

The requirements of Rule 4-215 are considered mandatory so as "to protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration." *Parren*, 309 Md. at 280. "[S]trict compliance" with the Rule is required, and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012).

Pursuant to Rule 4-215(e), when a defendant requests permission to discharge his attorney, the court must first allow the defendant the opportunity to explain why he wants to discharge the attorney. *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)). Although the trial court need not engage in a "full-scale inquiry pursuant to Rule 4-215," the record must indicate that the court at least considered the defendant's reasons for requesting his attorney's dismissal before rendering a decision. *Id.*

After hearing the defendant's explanation, the court is then tasked with determining whether the request is supported by meritorious reasons. *Dykes v. State*, 444 Md. 642, 652 (2015). If the defendant presents facially meritorious reasons for dissatisfaction with his attorney, the trial court must give "careful consideration" to the validity of those reasons. *Hawkins*, 130 Md. App. at 687.

If the trial court finds that the defendant has a meritorious reason for discharging his attorney, it must grant the request and give the defendant the opportunity to retain new counsel. *Williams*, 321 Md. at 273. If the court finds that the reason given is not meritorious, it may: (1) deny the request and continue the proceedings; (2) permit the

discharge but require counsel to remain on standby; or (3) grant the request and relieve counsel of any further obligation. *Id.*

"In evaluating the trial court's compliance with Rule 4-215(e), Maryland appellate courts generally apply a *de novo* standard of review." *Cousins v. State*, 231 Md. App. 417, 438 (2017). If we find that the trial court has complied with Rule 4-215(e), we review the court's determination that the defendant had no meritorious reason to discharge counsel for abuse of discretion. *Id.*

In this matter, the pertinent events occurred prior to jury selection on what was scheduled to be the first day of trial. Woolley informed the trial court that Bynum was dissatisfied with her services, triggering the trial court's inquiry into Bynum's reasons for seeking to dismiss his attorney.

Bynum explained that Woolley had "not prepared adequately towards this case" because she allegedly had not looked into potential defense witnesses or phone records, as he had requested, instead accepting whatever investigation the prosecutor had supplied. He said that his family had been seeking outside representation, but he gave no specific information about a new attorney, and he had not filed any complaint about Woolley's representation with the court. Based on Bynum's assertions, the trial court initially denied the request to discharge Woolley, but sent the parties to the administrative judge to hear Bynum's request for a postponement to obtain a new attorney.

Before the administrative judge, Bynum was again given the opportunity to explain the reasons for his dissatisfaction with Woolley's representation, and he did so at length. The administrative judge then asked Woolley to respond to Bynum's complaints.

Thereafter, the judge determined that he had not heard a meritorious reason to permit Bynum to discharge Woolley, as she had "worked diligently and ha[d] explored the issues" Bynum had raised.

After explaining that he would not postpone the matter, and advising Bynum that he could nonetheless discharge Woolley and represent himself, the administrative judge asked Bynum if he had anything he wanted to say but had not had a chance to articulate. Bynum responded, "I mean I said it's a lot . . . that I have to say. But the simple fact again, I just wanted to get representation of counsel from the outside, which my family is working on doing . . . That's what it was."

Bynum now complains that the administrative judge committed reversible error by failing to inquire further into what he meant when he said there was "a lot" more he had to say. We disagree.

As the Court of Appeals explained in *State v. Hardy*, 415 Md. 612, 628 n. 12 (2012),

> it is the defendant's duty to explain fully the reasons for the request after this opportunity has been provided, rather than there being a continuing burden on the trial judge to probe the defendant with questions until the defendant has given a fuller answer. Not only would it be difficult to determine the precise point at which this proposed mandatory line of questioning should cease, but there is no reason that a defendant with valid cause for dismissing his or her attorney should not be forthcoming with all of his or her reasons for requesting that dismissal.

Here, the colloquy among the administrative judge, Woolley, and Bynum, taken as a whole, indicates that the judge afforded Bynum every opportunity to explain his reasons for making the request to dismiss counsel. Nonetheless, Bynum chose not to elaborate on

his statement that he had "a lot" more to say, even though the onus rested on him to provide the administrative judge with all the reasons his request should have been granted.

Moreover, from Bynum's concluding statement -- "But the simple fact again, I just wanted to get representation of counsel from the outside, which my family is working on doing . . . [t]hat's what it was" -- the administrative judge reasonably could have inferred that, despite Bynum's statement that he had a lot more to say about the case, his request ultimately boiled down to nothing more than his singular desire for the court to allow his family to obtain an attorney for him.

By providing Bynum an opportunity to explain the reasons for his dissatisfaction with counsel, and by asking clarifying questions in order to determine the underlying basis for Bynum's dissatisfaction, the administrative judge sufficiently evaluated Bynum's request to discharge counsel and found it unmeritorious. Accordingly, we hold that the trial court did not abuse its discretion by denying Bynum's request to discharge counsel and for a postponement to obtain new representation.

II.

Bynum also argues that the trial court erred in precluding him from eliciting admissible relevant information from S.B-L. Specifically, he claims that the court should not have sustained the State's objection to S.B-L.'s testimony that the prosecutor had instructed her to answer that she was "not sure of the details" of the sexual touching, so as to mitigate and explain the discrepancies between her trial testimony and her pretrial statements to the social worker and police. He concludes that the error was prejudicial

because the case "largely boiled down to whether or not the jury credited [her] testimony" over his.

In her direct examination, S.B-L. testified that Bynum had touched her breasts, buttocks, and vagina and that she had touched his penis. Upon cross-examination, however, she acknowledged having told Startt, in September 2014, that Bynum had not touched her vagina and that she had not touched his penis. During re-direct examination, S.B-L. clarified that she had told Startt that Bynum only touched her breasts and buttocks "because [she] wasn't sure about all the details."

During re-cross examination, defense counsel questioned S.B-L. about the prosecutor's role in mitigating the discrepancies:

> Q. And so when we talk about details, it's an accurate statement to say that you knew Ms. Startt wanted the details?
>
> A. Yes.
>
> Q. And she asked you questions asking about the details of what happened?
>
> A. Yes.
>
> Q. And you answered her honestly?
>
> A. Yes.
>
> Q. When you said that you weren't sure about all the details over the court you talked to—I'm sorry. You talked—you went to the State's Attorney's office in March, right?
>
> A. Yes.
>
> Q. And you went to the State's Attorney's office last week, right?

A. Yes.

Q. And they talked to you about how to testify, right?

A. Yes.

Q. And this issue came up about whether you'd ever touched Mr. Bynum's penis, right?

A. Yes.

Q. And there came a time where you were told that you could just say that you weren't sure about the details, right?

A. Yes.

Q. Do you remember who told you that you could just say you weren't sure about the details?

A. The attorneys.

Q. Okay. And that's because this was new information, right?

A. Yes.

[PROSECUTOR]: Objection.

THE COURT: Sustained. Jury will disregard the question and answer.

In his brief, Bynum suggests that the trial court "likely sustained" the State's objection because it elicited hearsay. In his view, however, S.B-L.'s testimony about why the prosecutor told her to say she was not sure about the details of the sexual touching was not hearsay "because it was admissible to show the effect on her," that is, that she testified she was unsure about the details of the incidents because the prosecutor told her to do so. Because the testimony did not comprise inadmissible hearsay and was relevant, he concludes, the trial court should not have sustained the State's objection.

We agree with the State that Bynum has waived this claim of error. When the prosecutor objected to S.B-L.'s testimony, and the court sustained the objection, Bynum did not proffer the basis for the admissibility of the excluded testimony. He did not argue, as he does on appeal, that the testimony was admissible as an exception to the rule against the admission of hearsay.

As we explained in *Ndunguru v. State*, 233 Md. App. 630, 637 (2017) (quoting *Merzbacher v. State*, 346 Md. 391, 416 (1997)), "'[o]rdinarily, a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for review the propriety of the trial court's decision to exclude the subject evidence.'" When '"evidence is inadmissible on its face and admissible only for a limited purpose or under some theory, the proponent must . . . explain to the court how the evidence is admissible and why it should be received.'" *Id.* (quoting *Randall v. State*, 223 Md. App. 519, 557 (2015)). *See also* 5 Lynn McLain, *Maryland Evidence, State and Federal*, § 103:20 (May 2017) ("On appeal, the proponent cannot argue either that the evidence was admissible as nonhearsay or falls within a particular hearsay exception, unless the proponent made that particular argument below.").

Here, Bynum failed to explain to the trial court why the excluded testimony was admissible. Accordingly, this contention is not preserved for our review, and we decline to address it.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.