Circuit Court for Baltimore City
Case No. 118162009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1441

September Term, 2019

RODERICK KING

v.

STATE OF MARYLAND

Graeff,
Shaw Geter,
Gould,

JJ.

Opinion by Gould, J.

Filed: July 13, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Roderick King was convicted by a jury sitting in the Circuit Court for Baltimore City of the following crimes related to an armed carjacking and nonfatal shooting of a woman in the Fells Point area: attempted first-degree murder, first-degree assault, reckless endangerment, armed carjacking, conspiracy to commit armed carjacking, robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, theft of property valued at more than $1,500 but less than $25,000, use of a firearm in the commission of a crime of violence, possession of a regulated firearm by a disqualified person, and wearing, carrying, or transporting a handgun.[1]

Mr. King raises three questions on appeal, which we have rephrased slightly for clarity:[2]

[1] The court sentenced Mr. King to life imprisonment plus a consecutive 65 years. Mr. King was sentenced to life imprisonment for attempted first-degree murder; a consecutive 30 years for armed carjacking; a concurrent 20 years for robbery with a dangerous weapon; a consecutive 20 years for use of a firearm in the commission of a crime of violence, the first five years to be served without the possibility of parole; a consecutive 15 years for illegal possession of a regulated firearm, the first five years to be served without the possibility of parole; and a concurrent 30 years for conspiracy to commit armed carjacking. The court merged his remaining convictions for sentencing purposes.

[2] The questions as they appear in Mr. King's brief are:

1. Did the trial court err by admitting "other crimes" evidence?

2. Did the trial court err by denying appellant's mid-trial request to discharge counsel?

3. Did the trial court err by ruling that the State's "proffer agreement" with Akeya Jones did not constitute an "understanding" under Md. Rule 4-263, entitling the defense to its disclosure in written form?

I. Did the trial court err when it admitted certain "other crimes" evidence because the evidence was irrelevant and unduly prejudicial?

II. Did the trial court err when it denied Mr. King's mid-trial request to discharge his counsel?

III. Did the trial court err in not requiring the State to reduce to writing and disclose to the defense a "proffer agreement" between the State and Mr. King's accomplice as required under Maryland Rule 4-263?

For the following reasons, we shall affirm the judgments.

BACKGROUND

The State's theory of prosecution was that Mr. King shot Stephanie Woodyard in the head during an armed carjacking that he committed with his accomplice, Akeya Jones. Ms. Woodyard survived the shooting and testified at trial for the State, along with Ms. Jones and the lead detective on the case, among others. In addition, the State introduced CCTV video surveillance footage from the area around the carjacking and audio recordings of jail calls made by Mr. King following his arrest. The theory of the defense was that there was a lack of evidence connecting Mr. King to the crime. The defense called no witnesses. Viewing the evidence in the light most favorable to the State,[3] the following was elicited at trial.

Around 1:30 a.m. on April 22, 2018, Ms. Woodyard was leaving the bar where she worked in the Fells Point area. As she was getting into her car, which was parked on South

[3] *See Fuentes v. State*, 454 Md. 296, 307 (2017) (cleaned up) ("In determining whether the evidence is legally sufficient, we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.").

Conkling Street, a man and woman approached her. The man brandished a handgun and said: "You're going to give me everything . . . [k]eys, purse, and all." Ms. Woodyard moved over to the passenger seat, the man entered the driver's seat, and the woman entered the back seat. The woman grabbed Ms. Woodyard's face and jacket from behind and a struggle ensued, during which Ms. Woodyard scrambled part way out of the vehicle and fell to the ground. The man then got out of the car, walked to the front passenger side, and shot Ms. Woodyard in the head. Because of the angle of the gun, the bullet did not enter Ms. Woodyard's skull but traveled through the top of her head, close to her ear, and down the side of her face where it entered her shoulder. Ms. Woodyard threw her keys at the man, grabbed her purse that lay on the ground, and ran across the street to a nearby store as the car drove away. The State played for the jury, as Ms. Woodyard narrated, video footage from a surveillance camera located on South Conkling Street that showed the two assailants approaching Ms. Woodyard and her car, and the subsequent carjacking and shooting.

The police were called, and Ms. Woodyard was taken to an emergency room. The State introduced pictures taken by a crime scene technician, including pictures of the one cartridge casing found at the crime scene and Ms. Woodyard's bloody handprint on the glass door of the restaurant in which she had sought refuge after the shooting. An expert in firearms identification testified that the casing was fired from a 9-millimeter handgun.

The parties stipulated that Mr. King had been previously convicted of a crime that disqualified him from possessing a regulated firearm.

A day after the shooting and while still in the hospital, Ms. Woodyard told the police that her assailants were two customers she had seen at work the night of the carjacking. She testified at trial, however, that she was mistaken in her initial identification, explaining that she had been looking for a connection between herself and the two individuals that had attacked her. Ms. Woodyard identified Mr. King in court as the male assailant.

The police retrieved surveillance video footage from the area on the night of the carjacking and posted clips to various social media sites and distributed them to several news stations. Within days of the shooting, a police officer who was not involved in the case identified Mr. King as the assailant. However, when Ms. Woodyard was shown a police photographic array that included Mr. King's picture, she was unable to identify anyone. Ms. Woodyard posted to her Facebook page the surveillance video clips, and she subsequently received a Facebook message from an unknown individual identifying Ms. Jones. Ms. Woodyard then went onto Ms. Jones's Facebook page where she saw a picture of Ms. Jones and Mr. King. Ms. Woodyard immediately notified the police, identifying Ms. Jones and Mr. King as her assailants.

Ms. Jones testified that on the late evening of April 21, 2018, a friend drove her and Mr. King, her then boyfriend, to the Fells Point area. Ms. Jones testified that she and Mr. King had lived together in Essex for three months prior to the carjacking. She described their relationship as "rocky." When their ride home fell through, they started walking home by way of Eastern Avenue. She testified that Mr. King was "very upset" about having to walk home.

The State played surveillance video footage from a camera located on Eastern Avenue. The video showed Mr. King and Ms. Jones walking down Eastern Avenue toward the street where Ms. Woodyard's car was parked. As the two walked down the street toward the camera, Mr. King was gesticulating forcefully with his hands. Ms. Jones narrated the video and testified that Mr. King was "fussing" at her. The video then showed Mr. King punching Ms. Jones in the face, and her staggering to the ground. Ms. Jones testified that Mr. King "hit[] me in my face" because "I didn't answer [a] question correctly." The video showed Mr. King picking Ms. Jones up from the ground and holding her up as the two continued walking down the street, passing in front of the camera.

The State then played the surveillance video of the carjacking that it had played earlier during Ms. Woodyard's testimony. Ms. Jones narrated the video and testified that it showed the backs of her and Mr. King as they walked down South Conkling Street after Mr. King had hit her. Ms. Jones testified that as they approached Ms. Woodyard, Mr. King told her to grab Ms. Woodyard's purse. Ms. Jones entered the back seat, grabbed for Ms. Woodyard's purse, and Ms. Woodyard fought back. Mr. King, who had entered the car, hit Ms. Woodyard on the head with the gun, causing "[t]he clip" to fall out. Ms. Jones testified that Mr. King always carried a gun on him. Mr. King told Ms. Jones to retrieve the clip, which she did while Mr. King walked around to the passenger side of the car. Ms. Jones heard a gunshot. Ms. Jones then started the car, Mr. King got into the front passenger seat, and they drove away, eventually abandoning the vehicle after "wiping [it] down" for fingerprints. A few days later, Ms. Jones and Mr. King left for South Carolina. A few weeks later, they were arrested in South Carolina and extradited to Maryland.

Ms. Jones was charged as a co-defendant and faced "virtually the same charges as Mr. King," including armed carjacking and attempted first-degree murder. Ms. Jones refused to speak to the police for almost a year. At trial, she testified that she did not come forward because she was afraid of Mr. King because he had told her that he would hurt her if she cooperated with the police. She testified that she eventually came forward because she felt "[r]eally bad" and that Ms. Woodyard "didn't deserve it."

On March 14, 2019, in the presence of her attorney, Ms. Jones told the State prosecutor and the lead detective in an unrecorded statement what had happened. About two weeks later, she made a recorded statement and was taken into "safe housing." Ms. Jones testified that she had entered into a proffer agreement with the State which she believed provided that if she testified against Mr. King truthfully, the charges against her would be dismissed, although the State had made no promises.

The State also introduced into evidence and played for the jury, jail calls between Mr. King and an unidentified woman (who from context appears to be Mr. King's mother) on the day after Ms. Jones gave her recorded statement. The following colloquy occurred during the calls:

> [MR. KING]: I have some bad news, ma.
>
> [UNIDENTIFIED SPEAKER]: What?
>
> [MR. KING]: Being a federal State witness.
>
> [UNIDENTIFIED SPEAKER]: What do you mean she's a State witness?
>
> [MR. KING]: She made a statement yesterday, identifying me and I see in the video recording – audio, video recording that she did yesterday of her and attorney, was a State's attorney.

[UNIDENTIFIED SPEAKER]: Oh, my God. Oh, my God.

[MR. KING]: She just killed me, ma.

The phone call ended shortly thereafter, but Mr. King called the woman back and the following colloquy occurred:

> [MR. KING]: It's so unfortunate that we'd lock up for some shit like this, you know, and she gave me her word, ma. She gave me her word. She promised me, ma.
>
> * * *
>
> [MR. KING]: Just let me (indiscernible). Could you do something for me, please, babe?
>
> [UNIDENTIFIED SPEAKER]: What is that, Roderick? Please not something terrible.
>
> * * *
>
> [MR. KING]: Talk to her. You talk to her, you know, as a woman. Just talk to her as a mother, you know, and just talk to her[.]
>
> * * *
>
> [MR. KING]: I bet she's looking at it like I am (indiscernible) to them all the way up at two. I make that statement. She know what she make that statement. That's ball game because – and that's what she did. But why do that? Why you can't even just be a woman and just, you know, just tell me to confess? Like you going to do that shit behind my back like (indiscernible). That's what she did, ma, and she know better, ma.
>
> She know better, ma. She promised, ma. For me, she'll (indiscernible), ma. She didn't, ma. It's heartbreaking. She ain't get me a fair fight, ma. She was going home regardless. She was going home, ma. She had to do me like that. She was going home --

We shall provide additional facts as necessary to answer the specific questions presented.

DISCUSSION

I.

EVIDENCE OF "OTHER CRIMES"

Mr. King argues that the trial court erred when it admitted three instances of "other crimes" evidence: (1) surveillance video and testimony by Ms. Jones about Mr. King's assault on her; (2) Ms. Jones's testimony that Mr. King always carried a gun; and (3) Ms. Jones's testimony that Mr. King threatened to harm her if she told anyone about the armed carjacking and shooting.

A.

"OTHER CRIMES" AND RES GESTAE EVIDENCE

Maryland Rule 5-404(b) governs admission of "Other Crimes, Wrongs, or Acts," and provides:

> Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident[.]

"Other crimes" need not fall into the particular exceptions listed and will be admitted "so long as the evidence of 'other crimes' possesses a special or heightened relevance and has the inculpatory potential to prove something other than that the defendant was a 'bad man.'" *Page v. State*, 222 Md. App. 648, 663 (2015) (quoting *Oesby v. State*, 142 Md. App. 144, 162 (2002)); *see also Hurst v. State*, 400 Md. 397, 407 (2007) (explaining that "other crimes" evidence may be admissible if the "evidence is substantially relevant to

some contested issue in the case and is not offered to prove guilt based on propensity to commit crimes").

A three-part analysis is required before "other crimes" evidence may be admitted. *Sifrit v. State*, 383 Md. 116, 133 (2004). *First*, the court must determine whether the "evidence fits within one or more of the stated exceptions to Rule 5-404(b)." *Id.* (citing *State v. Faulkner*, 314 Md. 630, 634 (1989)). This is a legal determination we review without deference. *See id. Second*, the court must "determine whether the defendant's involvement in the other act has been established by clear and convincing evidence." *Id.* "We review the trial court's decision to determine if there is sufficient evidence to support [its] finding." *Id*. *Third*, the "trial court must weigh the probative value of the evidence against any undue prejudice that may result from its admission." *Id*. "This determination involves the exercise of discretion by the trial court." *Id*.

The Court of Appeals has explained, however, that the law of "other crimes," as stated in Rule 5-404(b), does not apply to "crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes." *Odum v. State*, 412 Md. 593, 611 (2010). As stated by the Court:

> We define "intrinsic" as including, at a minimum, other crimes that are so connected or blended in point of time or circumstances with the crime or crimes charged that they form a single transaction, and the crime or crimes charged cannot be fully shown or explained without evidence of the other crimes. Our conclusion is in accord with the interpretation that various federal courts of appeal have given to Federal Rule of Evidence 404(b), from which Maryland Rule 404(b) is derived. *See, e.g., United States v. Chin*, 83 F.3d 83, 87-88 (4th Cir. 1996) (collecting cases from other federal courts of appeal and stating: "We agree with the other circuits that where testimony is admitted as to acts intrinsic to the crime charged, and is not admitted solely to demonstrate bad character, it is admissible"; and defining as "intrinsic,"

> other criminal acts that are "inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged.").

Id. at 611-12; *see also Merzbacher v. State*, 346 Md. 391, 410 (1997) (cleaned up) (stating that prior bad acts evidence is admissible where it is "so much a part of a setting of the case and its environment that [their] proof is appropriate in order to complete the story of the crime on trial by proving the immediate context of the res gestae").

To admit such res gestae evidence, we must first determine whether the evidence was "legally relevant, a conclusion of law which we review *de novo*." *Smith v. State*, 218 Md. App. 689, 704 (2014) (quoting *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013)). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. After determining that the evidence is relevant, we then determine whether the circuit court "abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial." *Montague v. State*, 471 Md. 657, 673 (2020). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

B.

EVIDENCE THAT MR. KING ASSAULTED MS. JONES

Mr. King argues that Ms. Jones's testimony and the video showing his assault of her were inadmissible "other crimes" evidence that had no special relevance and were

unduly prejudicial. Mr. King also argues that the trial court "failed to articulate *any* weighing analysis" for admitting this evidence.

The State argues preliminarily that Mr. King has failed to preserve this argument for our review because he did not contemporaneously object to the admission of the video or Ms. Jones's testimony after the trial court had denied his motion in limine to exclude that evidence.[4] The State argues that, even if preserved, the trial court did not err in admitting the evidence because the evidence was not "other crimes" evidence. The State maintains that the evidence was part of the res gestae of the crime because it involved the same co-conspirators, in the same area, at around the same time. The evidence also helped to explain why Ms. Jones took part in the carjacking and why she was reluctant to speak to the police. Finally, the State argues that even if considered as evidence of "other crimes," the evidence was admissible to show motive and intent.

1. Preservation

Prior to trial, the State advised the court that, in its opening statement, it intended to describe the history of domestic violence by Mr. King on Ms. Jones,[5] and that two minutes

[4] The State cites to *Boyd v. State* 399 Md. 457, 478 (2007), which provides that under Maryland law, an in limine ruling admitting evidence ordinarily does not affect the requirement of Maryland Rule 4-323(a) that a contemporaneous objection be made when the evidence is introduced.

[5] As to the history of Mr. King and Ms. Jones's abusive relationship, the State advised the court that it intended to elicit from Ms. Jones that about a month before the armed carjacking and shooting, Mr. King was indicted by a Baltimore County grand jury for first-degree assault of her. The case was subsequently nol prossed. Defense counsel also expressed concern that Jones might testify that Mr. King "held a gun to my head in the past. He threatened my life in the past. He threatened my sister in the past" and "he's

(continued)

before the carjacking, Mr. King punched Ms. Jones in the face because he was angry about having to walk home because the ride Ms. Jones had arranged fell through. The State argued that evidence of the domestic violence supported Ms. Jones's credibility as to why she participated in the crime and was then testifying. Evidence of Mr. King's assault on Ms. Jones also went to Mr. King's motive and intent to kill that night because it occurred "so close in time and proximity to the carjacking[.]"

The defense responded that evidence of Mr. King's and Ms. Jones's abusive relationship and his hitting Ms. Jones was propensity evidence only and had no special relevance, adding that the assault was not so related in time or circumstances to the subsequent armed carjacking and shooting that the former was necessary to prove the latter. The defense then recast its argument as an oral motion in limine to preclude the State from introducing any such evidence.

After hearing the parties' arguments and reviewing the video of Mr. King's assault on Ms. Jones, the trial court made the following ruling:

> THE COURT: With regard to the motion in limine to preclude the State from telling the jury in opening statement that Ms. Jones is going to testify about an extraordinarily violent and abusive relationship that she had had with Mr. King up to the date of the alleged offenses in this case, for the reasons that were generated by the Court and it's [sic] questions of counsel and the Court's expressed, if you will, out loud thinking as it relates to other crimes evidence, prior bad acts, all with regard to the Court having considered, among other things, *Wynn v. State, State v. Faulkner*, and Maryland Rule 5-404 (B), this Court grants the Defense motion in limine. The State will be precluded from mentioning in any way in opening statement the professed

blackened my eyes, he's choked me to the point of unconsciousness[.]" (Internal quotation marks omitted).

> extraordinary nature of, violent nature, of the relationship between Mr. King and Ms. Jones.
>
> The Defense motion in limine to preclude the State from admitting the video within minutes prior to the alleged carjacking under an analysis of state of mind of the Defendant and motive at that time to be adduced from the testimony of Ms. [Jones] is denied.

After the court's ruling, the following colloquy occurred:

> [DEFENSE COUNSEL]:[6] So based on your [ruling] then, it would be up to me to object during trial as to any of this prior relationship of an abusive nature or violent nature comes up, it would be up to me to object to it –
>
> THE COURT: Well, based on –
>
> [DEFENSE COUNSEL]: -- before it happens?
>
> THE COURT: -- the Court's ruling –
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: -- it's going to be incumbent upon the State to sanitize its witness with regard to, if you will, barely going below scratching the surface as to the fact that the relationship had soured without any explanation as to why. Right? No blurt outs of having been beaten, or in fear, or any of those things that are, if you will, inextricably intertwined with the dynamic of domestic violence.
>
> There had been a relationship. It had gone bad. On this particular night -- "This is what happened on this particular night." And, you know, "I perceived," Ms. Jones, "that, you know, he was upset with me because the anticipated ride didn't come to pick us up and here we are walking now all the way back to -- across Eastern Avenue to Essex which could have taken hours." Right? And then, "*He was so upset, this is what he did to me*."
>
> Understood?
>
> [DEFENSE COUNSEL]: Yes, Your Honor.

[6] Although the transcript denotes the speaker as the State prosecutor, it is clear from the context that the speaker was in fact defense counsel.

> THE COURT: *And based on that, and based upon that anticipated, you know, sanitization of Ms. Jones' anticipated testimony, I don't believe there's going to be any need to object or to move to strike*.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: And, again, that's going to be incumbent upon the State to make sure that that issue is really cleaned up before Ms. Jones takes the stand. Now, obviously, if it's not sufficiently cleaned up and if there's a need to object, or a need to move to strike, or a need to move to do something else, obviously the Court will certainly consider any such request at that time.
>
> [DEFENSE COUNSEL]: Thank you.

(Emphasis added.)

In our view, when the court specifically included the evidence of the assault as evidence that Mr. King would not need to object to, we believe that Mr. King could have reasonably believed that such an objection wouldn't be required. Accordingly, Mr. King's argument is preserved for our review.

2. Analysis

We are persuaded that Ms. Jones's testimony and the video meet the requirements of res gestae evidence. After Mr. King assaulted Ms. Jones, they proceeded to walk to the next street where they turned onto South Conkling and approached Ms. Woodyard. The assault occurred within minutes of, and two blocks from, the carjacking. Without the evidence of the assault, the armed carjacking and attempted murder of Ms. Woodyard seem unprovoked and inexplicable. Thus, the evidence of the assault is sufficiently connected in time, place, and circumstances to the carjacking such that it was necessary for a complete description and understanding of the crimes charged. *See Odum*, 412 Md. at 611. Because

the evidence was res gestae evidence, the law relevant to "other crimes" does not apply. *See id.*

Our inquiry does not end here. Having determined that the assault was part of the res gestae of the armed carjacking and attempted murder of Ms. Woodyard, we must determine whether the evidence was relevant and not unduly prejudicial. *See Smith*, 218 Md. App. at 704.

As stated above, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The Court of Appeals has recognized that the finding of relevance "is generally a low bar[.]" *State v. Simms*, 420 Md. 705, 727 (2011). Moreover, whether evidence is "unfairly prejudicial" is not judged by whether the evidence hurts one's case but whether "it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum*, 412 Md. at 615).

Mr. King claims that the trial court erred because it "failed to articulate *any* weighing analysis" on the record. To the contrary, the parties and the court extensively discussed the relevancy and prejudice of this evidence, as reflected in over 53 pages of typed transcript. The court believed that the assault indicated Mr. King's state of mind and his angry disposition around the time of the carjacking. Evidence of the assault tended to identify Mr. King as the assailant, strengthened the inference that the shooting was not accidental, and showed his mens rea – that his state of mind carried over from the assault

of Ms. Jones to the shooting of Ms. Woodyard. Although Mr. King argues that mens rea was not a contested issue, the trial record belies his claim. In closing, Mr. King argued that in addition to a lack of evidence of criminal agency,[7] there was no evidence of intent— the shooting was accidental, not intentional. Last, the assault helped explain Ms. Jones's submission to the armed carjacking and shooting crimes and her delay in reporting.

It is clear from the record that the trial court considered the issue and concluded that the evidence was relevant and not unduly prejudicial. A trial court has considerable discretion in balancing the probative value against its potential unduly prejudicial impact. Under the circumstances, we cannot conclude the court abused its discretion. Thus, the evidence was admissible as part of the res gestae of the charged offense.[8]

C.

EVIDENCE THAT MR. KING ALWAYS CARRIED A GUN

Mr. King argues that the trial court erred in admitting Ms. Jones's testimony that he always carried a gun. *First*, citing to *Streater v. State*, 352 Md. 800, 810-811 (1999), Mr. King argues that the trial court committed procedural error in admitting the testimony because it failed to make any findings of fact or conclusions of law before admitting the

[7] In his opening statement, Mr. King alleged that there was no evidence that he was one of the assailants.

[8] Citing to two cases decided under "other crimes" law, Mr. King argues that the video was not "reasonably necessary" because the same information was available through Ms. Jones's testimony. Putting aside that Mr. King is also arguing that Ms. Jones's testimony should not have been admitted, the record reflects that the court properly assessed the prejudicial value of the evidence before admitting it. There was no error.

evidence. *Second*, Mr. King argues that the testimony constituted a prior bad act and "had no permissible purpose." Mr. King acknowledges that possession of a handgun, without more, does not impugn the character of the possessor. *See Klauenberg v. State*, 355 Md. 528, 551 (1999) (holding that testimony that two guns were found at the defendant's premises, without more, did not constitute bad acts where "[t]here was no indication that these firearms were obtained or possessed illegally"). Nonetheless, he argues that it did here because the parties had stipulated that he had been previously convicted of a crime that disqualified him from possession a regulated firearm, and that therefore, his possession of a firearm was illegal.

The State responds that Mr. King did not preserve this argument because he did not object on three separate occasions when Ms. Jones testified that he always carried a gun. Although the State acknowledges that defense counsel objected to a question about Mr. King's gun—whether Mr. King kept a bullet in the gun's chamber—the State argues that this was not enough to preserve the issue. The State alternatively argues that even if the evidence was admitted in error, any error was harmless "because similar testimony was admitted without objection, and because of the stipulation that [Mr. King] had a prior conviction."

1. Preservation

During the State's direct examination of Ms. Jones, the following was elicited:

[THE STATE]: Where was Mr. King carrying that gun that night?

[MS. JONES]: On his hip.

> [THE STATE]: Okay. Do you know from your experience with Mr. King, whether Mr. King kept a bullet in the chamber of the gun?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> * * *
>
> [THE STATE]: Do you know -- with regard to Mr. King and a gun, what, if any, condition he usually kept his gun in?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled. You may answer that question.
>
> [MS. JONES]: On his hip.
>
> [THE STATE]: Okay. And what, if any, condition was his habit of care of having the gun and in what condition, if you understand the question.

To that question, defense counsel objected, and the court sustained it, asking the parties to approach the bench.

At the ensuing bench conference, the State advised the court that it was only attempting to elicit whether Ms. Jones knew if Mr. King had a "habit [of] keep[ing] a round in the chamber." The court stated that it understood what the State was attempting to elicit, but the form of the question was improper. Defense counsel responded that Ms. Jones had already answered the question, stating "Asked and answered. 'On his hip.'" Both the State and the court disagreed with defense counsel's assessment that the State was attempting to elicit where Mr. King kept his gun. The court then advised the State to "reframe" its question. The parties returned to their trial tables and the following colloquy occurred:

> [THE STATE]: *What, if any, condition had you ever observed Mr. King to have his gun with respect to it being loaded or unloaded*?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled. You may answer that, if any.

[MS. JONES]: *I mean, he had always had one on him*.

THE COURT: I'm sorry?

[MS. JONES]: *He always had one on him*, but I don't --

THE COURT: He always had one on him?

[MS. JONES]: Yeah. *He always had a gun on him*. I don't know the condition or how it was or --

[THE STATE]: Okay.

THE COURT: Please move on.

(Emphasis added).

The question posed to Ms. Jones was: "What, if any, condition had you ever observed Mr. King to have his gun with respect to it being loaded or unloaded?" As worded, the question contained two questions of fact: (1) "ever observed" speaks to Mr. King having a gun, not just on the night in question, and (2) "unloaded or loaded" speaks to Mr. King keeping his gun in a certain state, loaded or unloaded. Over defense counsel's objection, which the court overruled, Ms. Jones answered the first question of fact when she testified that Mr. King "always had one on him." She did not answer the second question of fact. We are persuaded that Mr. King's objection to the question posed preserved for our review his argument regarding Ms. Jones's testimony that Mr. King "always had a gun on him" because the answer was responsive to the question within the question asked – whether Mr. King had a habit of carrying a gun.

2. Analysis

Mr. King argues that the trial court erred in admitting this evidence because the court "failed to make any findings of fact or conclusions of law." He supports his argument with one quote from *Streater*, 352 Md. at 810: "As a final consideration, we emphasize that, should the trial court allow the admission of other crimes evidence, it should state its reasons for doing so in the record so as to enable a reviewing court to" determine "whether Md. Rule 5-404(b), as interpreted through the case law, has been applied correctly."

To the extent that Mr. King is arguing that *Streater* requires a trial court to make findings of fact or conclusions of law on the record when it rules on the admissibility of "other crimes" evidence, we reject his argument. The language in *Streater* is more appropriately interpreted as a best practices suggestion. *See Crane v. Dunn*, 382 Md. 83, 100 (2004) (citing *Streater* as a case that suggested that trial courts are not required to but are encouraged to state their reasoning on the record). This interpretation is supported by the clear and plain language of Rule 5-404(b), which does not contain any language requiring findings of fact on the record. Our interpretation is further supported by later decisions by the Court of Appeals rejecting claims involving other rules governing the admissibility of evidence that explicit findings by the trial court are required even though the particular rule does not contain language requiring such findings. *See Crane*, 382 Md. at 100 (explaining that Md. Rule 5-403, which requires courts to balance the probative value of evidence against the danger of unfair prejudice, "does not . . . specify that the trial judge must state on the record the reasons for his or her decision to exclude evidence, even though that practice is preferable"); *McClain v. State*, 425 Md. 238, 252-53 (2012) (stating

that Md. Rule 5-802.1, governing certain hearsay exceptions, "unlike some other Rules, does not require explicitly that findings be placed on the record, and we decline to read into the Rule such a requirement"); *Walker v. State*, 373 Md. 360, 391 (2003) (stating that "[t]he intermediate appellate court correctly noted that the record was ambiguous as to whether the trial judge conducted such a balancing test [under Md. Rule 5-607, governing impeachment], but that there is no requirement that the balancing test explicitly be performed on the record").

We similarly disagree with Mr. King's argument that the gun evidence was inadmissible "other crimes" evidence because the evidence had "no permissible purpose." Evidence of Mr. King's gun possession had special relevance because it showed criminal identity and absence of mistake, both of which Mr. King contested, and the evidence was not unduly prejudicial. *Cf. Ware v. State*, 360 Md. 650, 675-76 (2000) (holding that testimony that the defendant "had a gun and . . . always carried it with him" was relevant to establish both that the defendant possessed a gun and that he had the habit of carrying a gun because "the habit of carrying a gun made it more likely that he had a gun on the day of the murders"), *cert. denied*, 531 U.S. 1115 (2001); *Reed v. State*, 68 Md. App. 320, 330 (1986) (holding that a trial court did not err in permitting a witness to testify that she saw the defendant carrying a handgun one and one half to two years prior to the murder for which he was on trial because such evidence "was probative to show that the [defendant] possessed the type of weapon employed in killing [the victim]"); *Hayes v. State*, 3 Md. App. 4, 8-9 (1968) (stating that "[i]t is always relevant to show that the defendant before the date of the crime had in his possession the means for its commission[,]" and holding

that a trial court did not err in admitting testimony that the defendant possessed a similar type of weapon prior to the shooting because such testimony was "a proper showing of possession of the means of committing the crime").

Even if we were to conclude that the evidence was admitted in error, the admission of the evidence was harmless. In Maryland, determining whether an error is harmless is governed by a single standard:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Smith v. State, 423 Md. 573, 598-99 (2011) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). If Mr. King demonstrates error, the burden shifts to the State to persuade the appellate court that, beyond a reasonable doubt, the error had no influence on the verdict. It is our task to determine "whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded." *Ross v. State*, 276 Md. 664, 674 (1976).

In *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986), the United States Supreme Court established five factors for an appellate court to analyze whether an error contributed to the verdict: (1) the importance of the tainted evidence to the State's case; (2) whether the evidence was cumulative or unique; (3) the presence or absence of corroborating or

contradictory evidence; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State's case.

Evidence that Mr. King always had a gun on him was not vitally important to the case. The overall strength of the State's case against Mr. King convinces us that any error in the admission of this evidence was harmless beyond a reasonable doubt. Both the victim and Mr. King's accomplice identified Mr. King as the male assailant. The State introduced video footage taken shortly before and at the time of the crimes showing Mr. King and Ms. Jones walking toward Ms. Woodyard's car and then engaging in the charged crimes. The State also introduced jail calls that a rational jury could conclude were admissions that he committed the crimes against Ms. Woodyard. We are persuaded that evidence that Mr. King always carried a gun in no way affected the verdict and that its admission was, at most, harmless error.

C.

EVIDENCE THAT MR. KING THREATENED MS. JONES

Mr. King argues that the admission of Ms. Jones's testimony that she did not come forward earlier because Mr. King threatened to hurt her was procedurally inadmissible. Again, citing to *Streater*, 352 Md. at 810-11, he argues that the court did not make any findings of fact or conclusions of law on the record. He also argues that the evidence was procedurally inadmissible because it was impeachment evidence that was elicited on direct examination before Ms. Jones was impeached. According to Mr. King, this type of anticipatory rehabilitation is impermissible under *Washington v. State*, 293 Md. 465 (1982). He also argues that the testimony was inadmissible "other crimes" evidence

because it had "no permissible purpose." The State again responds that *Streater* does not require explicit findings on the record. The State also argues that the evidence was not impeachment evidence but properly admitted as substantive evidence of consciousness of guilt under Maryland Rule 5-404(b). We agree with the State.

During the State's direct examination of Ms. Jones, the following colloquy occurred:

> [THE STATE]: What, if anything, did Mr. King say to you that night after the event about what had just transpired?
>
> [MS. JONES]: He said if I say anything that he's going to hurt me.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

On the State's re-direct examination of Ms. Jones, the following colloquy occurred:

> [THE STATE]: Okay. And you were asked why you didn't come forward earlier. Can you tell the ladies and gentlemen of the jury why when you first got back to Baltimore from South Carolina with the Defendant why then didn't you come forward and give this information?
>
> [MS. JONES]: Because I was afraid.
>
> [THE STATE]: Afraid of what?
>
> THE COURT: Counsel, in light of the prior ruling, please tread carefully.
>
> [THE STATE]: Afraid of what or of who, shall I say?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [THE STATE]: You can answer.
>
> THE COURT: You can answer that question.

> [MS. JONES]: I was afraid of everything. I was afraid of -- about the situation. I was shocked.
>
> [THE STATE]: Were you afraid of Mr. King?
>
> [MS. JONES]: Yes.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Move to strike.
>
> THE COURT: Granted. The jury shall disregard the answer and the question that preceded it.
>
> [THE STATE]: *What, if anything, had Mr. King said to you about your potential cooperation with the police*?
>
> [DEFENSE COUNSEL]: *Objection.*
>
> THE COURT: *Overruled. You can answer that question*.
>
> [MS. JONES]: *That he would hurt me*.

(Emphasis added).

As we explained above, *Streater* does not requires a trial court to make explicit its findings of fact and conclusions of law under Maryland Rule 5-404(b) on the record.[9] Further, *Washington* is inapposite. In *Washington*, 293 Md. at 466-67, the Court of Appeals addressed whether evidence of threats made to a prosecution witness by an

[9] While Mr. King does not argue that the threats were not proven by clear and convincing evidence or that the evidence was inadmissible because it was unduly prejudicial, Ms. Jones's testimony—that Mr. King had threatened her—crossed the clear and convincing threshold. We are likewise persuaded that the highly probative nature of the evidence outweighed any danger of undue prejudice. *See Burris*, 435 Md. at 392 (internal quotations omitted) ("The more probative the evidence . . . the less likely it is that the evidence will be unfairly prejudicial.").

anonymous person, where the witness had been impeached because of her inability to identify the defendant prior to trial, was admissible for the purpose of explaining her inability to identify the defendant. Before addressing that question, the Court of Appeals recognized that it was not presented with the issue of whether evidence of threats may be offered as substantive evidence of guilt, explaining that "[e]vidence of threats to a witness, or attempts to induce a witness not to testify[,] . . . is generally admissible as substantive evidence of guilt when the threats or attempts can be linked to the defendant[.]" *Id*. at 468 n.1.

Here, contrary to Mr. King's argument, evidence of Mr. King's threats demonstrated his consciousness of guilt, and therefore, the evidence was substantively admissible under Maryland Rule 5-404(b). *See Copeland v. State*, 196 Md. App. 309, 316-17 (2010) (that the defendant attempted to intimidate a witness from aiding in his prosecution by threatening to kill the witness and her family was admissible consciousness of guilt evidence under Rule 5-404(b)). As such, this evidence was properly admitted.

II.

REQUEST TO DISCHARGE COUNSEL

Citing to *State v. Brown*, 342 Md. 404 (1996), Mr. King argues that the trial court erred when it denied what he contends was his mid-trial request to discharge his counsel because (1) the court failed to make a threshold determination that he was attempting to assert his right to discharge counsel when he expressed dissatisfaction with his attorney; and (2) the trial court's initial statement to Mr. King that the "trial doesn't stop"

demonstrated that "nothing" he said "was meaningfully considered [by the trial court] in determining whether dismissal of counsel was warranted[.]"

The State responds that no error occurred because Mr. King never asserted his right to discharge counsel, arguing that Mr. King did not ask to discharge his counsel, ask for other counsel, or ask to proceed *pro se*. The State continues that even if Mr. King's statements to the court could be viewed as a request to discharge counsel, the trial court properly addressed Mr. King's concerns by allowing Mr. King to discuss his concerns privately with his attorney, and properly, albeit implicitly, determined that Mr. King's concerns were not meritorious.

A.

RELEVANT LAW

"The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights." *Jones v. State*, 175 Md. App. 58, 74 (2007) (citing *Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963) and *Walker v. State*, 391 Md. 233, 245 (2006)), *aff'd*, 403 Md. 267 (2008). A defendant in a criminal prosecution therefore has both a constitutional right to have effective assistance of counsel and the corresponding right to reject that assistance and represent himself. *See Powell v. Alabama*, 287 U.S. 45, 71 (1932) (recognizing the constitutional right to the effective assistance of counsel); *Faretta v. California*, 422 U.S. 806, 807 (1975) (recognizing the constitutional right to defend oneself at trial); *Snead v. State*, 286 Md. 122, 123 (1979) (recognizing that a defendant has both the constitutional right to the assistance of counsel and the right to proceed *pro se*).

Maryland Rule 4-215(e) protects these constitutional guarantees and provides:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

Thus, three steps occur when a defendant makes a request to discharge counsel: (1) the defendant explains his reasons for wanting to discharge counsel; (2) the court determines whether the reasons are meritorious; and (3) the court advises the defendant and takes other action depending on whether the court finds a meritorious reason to discharge counsel. *State v. Westray*, 444 Md. 672, 674-75 (2015).

"The provisions of [Rule 4-215(e)] are mandatory and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010) (internal quotations omitted). Accordingly, we review a circuit court's compliance with Rule 4-215(e) without deference. *State v. Graves*, 447 Md. 230, 240 (2016). But we review the court's decision to grant or deny a defendant's request to discharge counsel for abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013). An "abuse of discretion" occurs "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Nash v. State*, 439 Md. 53, 67 (internal quotations omitted) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 574 U.S. 911 (2014).

The Rule does not define "request," but the Court of Appeals has provided some guidance when determining whether a request to discharge counsel has occurred. "A request to discharge counsel need not be explicit, . . . nor must a defendant state his position or express his desire to discharge his attorney in a specified manner[.]" *Gambrill v. State*, 437 Md. 292, 302 (2014) (cleaned up). The Rule is triggered "by any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *Williams v. State*, 435 Md. 474, 486-87 (2013). Circumstances that have been held to trigger the requirements of Rule 4–215(e) include:

- when the public defender informed the court that the defendant told him that he preferred to have private counsel represent him rather than the public defender, *Graves*, 447 Md. at 235;
- when the public defender requested a postponement and indicated that the defendant would like to hire private counsel, *Gambrill*, 437 Md. at 297;
- when the defendant wrote a letter to the court requesting new representation, *Williams*, 435 Md. at 479, 488-89;
- the defendant announcing in court: "[I am] thinking about changing the attorney or something[,]" *Hardy*, 415 Md. at 623;
- the defendant telling his counsel who told the court that the defendant "didn't like" the attorney's evaluation of his case and that he "[w]anted a jury trial and new counsel[,]" *State v. Davis*, 415 Md. 22, 27, 35 (2010);
- the defendant telling the court "I don't like this man as my representative" and "[Y]ou all wouldn't let me fire him" as well as several other similar statements of dissatisfaction with his attorney, *State v. Campbell*, 385 Md. 616, 632 (2005);
- the defendant telling the court "I want another representative[,]" *Williams v. State*, 321 Md. 266, 267-68, 274 (1990); and

- the defendant stating "I don't want no attorney then" when the trial court refused to grant a continuance so that the defendant could obtain private counsel, *Snead*, 286 Md. at 130-32.

Although expressions of dissatisfaction with counsel *along with* expressions of a desire to proceed without counsel have been deemed sufficient to trigger the requirements of Rule 4-215(e), we are aware of no case law that suggests that expressions of dissatisfaction alone are sufficient.

In any event, a defendant's rights under Rule 4-215(e) change significantly "after trial has begun." *Brown*, 342 Md. at 417. After "meaningful trial proceedings" have begun, *Campbell*, 385 Md. at 632, the mandatory nature of Rule 4-215(e) is no longer applicable, and the "decision to permit discharge of counsel . . . is within the sound discretion of the trial court." *Brown*, 342 Md. at 420. "The court's burden in making this inquiry is to provide the defendant the opportunity to explain his or her reasons for making the request; in other words, the court need not do any more than supply the forum in which the defendant may tender this explanation." *Hardy*, 415 Md. at 628. The court should consider the following factors to determine whether the defendant's reason for dismissal of counsel justifies any resulting disruption:

> (1) the merit of the reason for discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

Id. at 629 (quoting *Brown*, 342 Md. at 428).

B.

ANALYSIS

Here, at the start of the third day of a three-day trial, defense counsel informed the court that Mr. King had told him that "he'd like to address Your Honor. I do not know the nature of what he wants to say." Mr. King then told the court:

> I just feel like the, you know, I'm not receiving a fair trial because [defense counsel] has, you know, disregarded, you know, my defense in so many different ways. You know, I have evidence that we discussed that he was going to use for us, you know, letters of correspondence between me and [Ms. Jones]. And, you know, that what it show, you know, a different side of, you know, have credibility.

The court responded by stating:

> But what I would want to know is if you can feel comfortable telling me and perhaps -- well, I guess, it wouldn't be the first time you're telling [defense counsel] because you said you've raised these concerns to him but for whatever reasons, he's chosen not to follow and pursue those particular concerns, right?

When Mr. King replied in the affirmative, the trial court questioned Mr. King about his and his counsel's interactions regarding the letters. Mr. King advised the court that his attorney had originally told him that he would use the letters, but just before the cross-examination of Ms. Jones, he told Mr. King he would not, explaining that because the trial court had ruled that Mr. King's prior violent acts in the context of their relationship were inadmissible, he did not want to "open the door[]." Over seven pages of transcript, the court then explained to Mr. King why his attorney might have changed his mind, stating, "I think it's important for you to know that the [pretrial] and trial process is fluid. Decisions might be made and they're changed based upon what's happening."

Mr. King responded that he understood the court's explanation but added that during trial "[w]hen I'm tapping him, writing questions down and ask him to cross-examine

witnesses in [a] certain way . . . he just disregard[s me]." Mr. King explained he had asked his counsel to obtain a DNA expert to testify on his behalf and admit into evidence additional telephone conversations, but "everything that, you know, far as the strategy and the defense, everything that I present, he disregarded." The court responded that Mr. King had addressed several "'areas of disconnect' between you and [defense counsel]. Obviously, we're in effectively day three of the trial and the trial doesn't stop." The court added:

> What we're going to do is I'm going to -- you know, the jury can wait a few moments certainly. I'm going to put the break on things. I'm going to keep the white noise on, the filtering noise to ensure your privacy. And then I'm going to ask you to step back. I'm going to give you gentlemen . . . time to consult further and see what you might be able to connect on areas of concern.
>
> And if they are various [areas] where you're still at the impasse with [defense counsel], I'm going to give him an opportunity to explain to you, just explain to you from his perspective based upon his frankly decades of criminal felony trial experience, why he is advising you to pursue or not pursue certain angles. If it should turn out, hypothetically, that the result of this case is not favorable to you because of what the jury decides, you will in no way be barred from raising those concerns at an appropriate time because it's all going to be out here now as to between the two of you.

When the State informed the court that it would like to supplement the record with some of the conversations the State had had with defense counsel, the court responded:

> You know, one of the many things that a trial judge does is keep his or her mouth close[d] and listen and hear concerns by all parties and process that information and respond to all requests.
>
> It's an abuse of any court's discretion to just make decisions, right, cavalierly shooting from the hip without having had the benefit of really hearing what the concerns of all the parties are, all the parties, and hearing the law that the party who's addressing a concern, believes supports a ruling as to his or her concern, you know, in a very, very equal manner. Okay.

> So having said what I've said, what I'm going to do now is just be quiet, give you time to talk. When the State wants to supplement the record with regard to your concerns that you've just expressed now, I'll hear from the State.

Mr. King responded that the court's explanations were helpful but "I just want to state it for the record just to let it [be] known that I feel like . . . he's ineffective." The court advised him and his counsel to take as long as needed to talk through Mr. King's concern.

The court took about a ten-minute recess. When the court reconvened, the State explained that there were a number of letters between Mr. King and Ms. Jones while he was in jail that the State had subpoenaed, which contained some things that could have been used by the defense and other things that could have been used by the State, including content related to domestic abuse that was "almost sinister in parts and would certainly have been even more damning." The State and the court further discussed the matter:

> [THE STATE]: . . . [Defense counsel] and I had a discussion just before Ms. Jones's cross-examination about those letters because I saw one of . . . them sitting on the table, and we actually did engage in that discussion about the fact that that would most likely open the door wide open to the very thing that he had fought to not come in, mainly the . . . evidence about domestic violence.
>
> THE COURT: Okay. So understanding just that summary from the State's perspective, that really goes to the Court's, if you will, overarching discussion with Mr. King about, if you will, the fluid nature --
>
> [THE STATE]: Uh-huh.
>
> THE COURT: -- of [pretrial] and trial proceedings, and as situations change with regard to evidentiary issues, with regard to strategies --
>
> [THE STATE]: Uh-huh.

> THE COURT: -- whether they'd be of the State or the Defense, that decisions arising from those situations change in at least in small part strategy decisions. Okay.

The prosecutor also stated that he had discussions with defense counsel about the DNA evidence, which would have shown that neither Mr. King's nor Ms. Jones's DNA was found inside the car. But he explained that this evidence was counter-balanced because the police had tried to collect Mr. King's fingerprints on two occasions, but he refused to cooperate, even when the police had a warrant. According to the State, "there was some very bad information that would have come out of those encounters which [defense counsel] and I discussed extensively[,]" including "a suggestion that there would be . . . violence, if in fact there was an attempt to collect those prints from Mr. King[.]"

When the State added that he and defense counsel agreed that he would not go into the fingerprint evidence and the defense would not go into the DNA evidence, Mr. King said, "that's a lie[.]" The court responded:

> The record reflects that you disagree with the assertion, the truthfulness and the veracity of some of the things that [the State] just said and I'm not going to belabor that point. I've heard from the Defense about the Defense'[s] concerns. I've heard from the State about what's the State's response to the Defense'[s] concerns are. These points may be an issue for another day by a court with a far greater authority than myself or they may not. Time will tell, gentlemen.

The court then proceeded with trial.

Based on the record before us, Mr. King did not make a request to discharge counsel. Unlike the cases noted above, here, Mr. King expressed dissatisfaction with his counsel, and the court, in response, inquired into his dissatisfaction in detail. At no point did Mr.

King make a statement from which a court could reasonably conclude that Mr. King was interested in discharging counsel or in proceeding *pro se*.

Nonetheless, because a defendant's request for self-representation should be liberally construed, *Snead*, 286 Md. at 127, we will assume *arguendo* that Mr. King made a request to discharge counsel, and we will evaluate whether the court abused its discretion in denying the request. We conclude that it did not.

Mr. King raised his concerns on the third day of trial. The trial court fully inquired into Mr. King's reasons for his dissatisfaction with his counsel and provided Mr. King with an opportunity to explain his disagreements with counsel. The court engaged in a lengthy and substantive conversation with Mr. King about those reasons before resuming the trial, which is tantamount to a ruling that Mr. King's disagreements did not constitute a meritorious reason to discharge counsel.

The other factors, whether the discharge of counsel would have had a disruptive effect on the proceedings, the timing of the request, and the complexity and stage of the proceedings, likewise support the trial court's decision not to grant a discharge of counsel. Mr. King's request came on the final and last day of trial, after the State had examined its two main witnesses, Ms. Woodyard and Ms. Jones. The disruptive effect of Mr. King discharging his attorney and either proceeding *pro se* or substituting counsel late in the proceedings, likely would have "undu[ly] interfer[ed] with the administration of justice." *Brown*, 342 Md. at 414. Further, the fact that Mr. King had not made any prior requests to discharge counsel supports our conclusion that the trial court did not abuse its discretion in denying Mr. King's alleged request to discharge counsel. Accordingly, even if we were to

view Mr. King's statements as a request to discharge counsel, we find no abuse of discretion by the trial court in allowing Mr. King an opportunity to explain his concerns and then resuming the trial without allowing Mr. King to discharge counsel.

III.

THE STATE'S ORAL AGREEMENT WITH MS. JONES

Mr. King argues that the trial court erred in not requiring the State to reduce to writing an oral proffer agreement memorializing that the State would dismiss the charges against Ms. Jones if the State was satisfied with her testimony that she acted under duress. Mr. King argues that the State's failure to create a written agreement and to provide that agreement to the defense was a discovery violation. According to Mr. King, "[w]ithout a written agreement [of] the specific terms of the State's understanding with [Ms.] Jones . . . defense counsel could not challenge [Ms. Jones's] testimony" or "effectively cross-examine her regarding the specific terms of her understanding with the State[.]" The State responds that the trial court properly denied Mr. King's request for a written agreement. For the reasons that follow, we agree.

Maryland Rule 4-263 governs discovery in the circuit court and provides, among other things, that the State "shall provide to the defense," without the necessity of a request:

> [a]ll material or information in any form, whether or not admissible, that tends to impeach a State's witness, including: . . . a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness[.]

Md. Rule 4-263(d)(6)(B). The purpose of the discovery rule is to assist the defendant in preparing his defense and to protect him from surprise. *Johnson v. State*, 360 Md. 250, 265 (2000).

At a pretrial hearing on March 29, 2019, defense counsel requested that the State reduce to written form a "proffer agreement" between the State and Ms. Jones in which the State allegedly agreed to dismiss the charges against Ms. Jones, if, based on her truthful testimony at Mr. King's trial, the State was satisfied that she had acted under duress at the time of the carjacking and shooting. The State advised the court that it had entered into no formal agreement with Ms. Jones and explained that after sitting in on Ms. Jones's unrecorded statement on March 14th. As stated by the prosecutor:

> when I followed up with [Ms. Jones's counsel] . . . having done, at that point, my legal research into the elements of the [d]efense of duress as well as the facts, as I understood them, of the case and what she had said during the proffer, I had opined to [Ms. Jones's counsel] that if Ms. Jones testified under oath both on direct and cross in a manner consistent with what she had said at her proffer . . . that I would be persuaded that legally and ethically, I would be duty-bound to not prosecute her because all of the elements of the defense of duress would have been met.

When further questioned by the court, the State explained:

> [A]t this time, I have not made that determination because she has not testified. The only understanding that exists is just the understanding that I have an ethical obligation not to prosecute someone who has a valid defense and that if she testifies under oath in a manner that gives that rise to a valid defense and that is -- satisfies those elements of a valid defense of duress, then I would be duty-bound not to prosecute her.
>
> And I indicated to [Ms. Jones's counsel] that based on what was said at the proffer session, that it certainly seemed to me that that would be -- those elements would be satisfied if after her full testimony she -- those facts still remained exactly the same.

The State reiterated that it had entered into no written agreement with Ms. Jones to dismiss any charges and that it had provided defense counsel with Ms. Jones's recorded statement made several days later. The court denied the defense motion, ruling that Maryland Rule 4-263 was not implicated because there had been no "formal understanding, and that the issue is not yet ripe."

Here, defense counsel was orally advised that if Ms. Jones's trial testimony mirrored her unrecorded March 14th statement, the State might dismiss the charges against her because theoretically she would have a defense of duress. Although Rule 4-263 states that the State must provide to the defense "[a]ll material or information in any form[,]" it does not require the State to reduce an agreement or understanding to written form.

The State provided to defense counsel information regarding its understanding of Ms. Jones's impending testimony and its potential to cause the State not to prosecute her. It was not required to do more. Mr. King cross-examined Ms. Jones about her understanding. She testified that the State prosecutor had advised her that if she told the truth and testified similarly as to what she had told the prosecutor and police during her unrecorded and recorded statements, she believed that the State would dismiss the charges

against her, although the State had made no promises. The defense elicited all there was to elicit. The State did not violate any discovery rule. As such, there was no error.[10]

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

[10] To the extent that Mr. King argues that the State was required to reduce to writing an agreement that the State would dismiss the charges against her because she had a valid defense of duress, we still find the State was not required to do so because that was not the State's understanding with Ms. Jones's defense counsel.