UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0120

September Term, 2015

ANTOINE BELIZAIRE, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 1, 2016

Appellant, Antoine Belizaire, Jr., was convicted by a jury in the Circuit Court for Wicomico County, Maryland, of possession of a large amount of controlled dangerous substances: heroin, possession with intent to distribute heroin, and a total of four related counts of conspiracy. Appellant was sentenced to ten years for possession of heroin-large amount, consecutive to the sentence previously imposed in a related case, to be followed by a consecutive twenty years for conspiracy to possess heroin-large amount, with the remaining counts merged.[1] Appellant timely appealed and presents the following questions for our review:

> 1. Did the trial court err in imposing unreasonable time limits on the length of closing arguments?
>
> 2. Did the trial court err in allowing the State to elicit testimony referring to prejudicial and irrelevant other crimes evidence?
>
> 3. Did the trial court err in finding that Appellant's reasons for discharging counsel were not meritorious?
>
> 4. Should three of the convictions for conspiracy be reversed and the sentences vacated?

For the following reasons, we shall vacate the three convictions for conspiracy that were merged for purposes of sentencing. Otherwise, the judgments are affirmed.

[1] Appellant notes in his brief that another case was tried shortly before this case. That case is currently on appeal as *Belizaire v. State*, No. 122, September Term, 2015 (submitted on brief on September 15, 2016).

BACKGROUND

On April 22, 2014, appellant was apprehended by officers from the Maryland State Police on an outstanding arrest warrant. As he was being booked at the Maryland State Police Barrack in Salisbury, Maryland, Trooper Kenneth Moore heard appellant make a statement to his girlfriend, Demitria Lynette Howard, who was also apprehended at the same time as appellant. Appellant stated, "hey, don't worry, I'll take care of this, this is mine." Appellant made a similar statement to Howard when they were both being processed later at the Wicomico County Detention Center. Appellant was overheard telling Howard, "hey, don't worry, you know, this is mine," and also telling Trooper Moore, "You know, come on, Moore, you know this is mine, she ain't got nothing to do with this."

Thereafter, Salisbury City Police Officer Pizzaia became aware of phone calls being made by appellant from the Wicomico County Detention Center. Over a continuing objection, Officer Pizzaia testified that "there was a large amount of heroin being stored at a residence in Hebron and that Mr. Belizaire was directing people to either move the heroin or distribute the heroin to individuals living or residing in the Wicomico County area." And, Maryland State Police Sergeant Carlisle Widdowson, a supervisor with the Wicomico County Narcotics Task Force, clarified that, while appellant was incarcerated in the detention center, he "was in contact with two other individuals and he was attempting to move a large amount of heroin." These other individuals were Leslie Franklin Ellis and Howard. According to Sergeant Widdowson, appellant was making

phone calls to Howard and giving her coded instructions "as to where exactly the heroin was, how much it was, and when it was going to be moved."

Transcripts of the recorded phone calls, and a CD of those calls, were moved into evidence and played for the jury. After listening to the phone calls, Sergeant Widdowson located Howard and subsequently met her at her lawyer's office in Salisbury, Maryland. Details of that meeting were elicited during trial when appellant had Sergeant Widdowson read from his report during cross-examination. Howard suggested that she moved heroin for appellant to the home of appellant's mother, located in Eden, Maryland. However, after deeming Howard not entirely truthful, and after speaking with appellant's mother, police eventually responded to a home belonging to Frank Ennis, Howard's uncle, located on Wood Avenue next door to Howard's residence.

When officers went to the Wood Avenue address at approximately 1:00 p.m. on April 24, 2014, Ennis cooperated with the investigation and led the police to the kitchen area. There, the police recovered three large baggies of suspected heroin from a canister inside a kitchen cabinet. The substance in the baggies tested positive for heroin. One baggie contained 100.12 grams, another contained 100.17 grams, and the third baggie contained 99.83 grams of heroin. Additional items were recovered after a further search of the remainder of the Wood Avenue address, including digital scales, another 93.51 grams of heroin, and marijuana.

Howard, the mother of appellant's six-month-old child, testified as a State's witness. Howard was asked if, at some point, appellant asked her to do something with respect to controlled dangerous substances. Howard confirmed, "Yes, but I was under

the impression it was something else." Howard thought appellant wanted her to move marijuana. After they were arrested, and while they were in police custody, appellant told Howard, "once you get home go move something and put it up for me." After she was released from custody, Howard found an item and covered it up and concealed it inside one of her black leather boots back at her house. She then took that item to "my Uncle Frankie's house." According to Howard, her uncle, Ennis, told her that he concealed the item in a canister in the kitchen.

Ennis testified as a State's witness as well. He confirmed that he knew Howard and appellant were previously in a relationship. Ennis also confirmed that, on around April 22 or 23, 2014, Howard brought him "some type of drug" to conceal at his Wood Avenue address. Ennis hid the item in a "jar" in the kitchen. Ennis later spoke to appellant to tell him that "I wanted to get it out of my house, basically."

On cross-examination, Ennis agreed that he and appellant were "not necessarily" speaking about heroin, and their conversations "could have been any kind of drug." Further, "it could have been cocaine, it could have been heroin, it could have been anything." But, Ennis also testified that Howard told him the item she brought to hide was "[e]ither heroin or cocaine."

Detective Jordan Banks, assigned to the Wicomico County Narcotics Task Force, and accepted as an expert in the assessment, identification, and valuation of street level narcotics, examined the heroin recovered in this case and testified "[t]hat's a very substantial amount of heroin, especially for this area." Usually, according to Detective Banks, heroin was sold in $20 bags containing about one one-hundredths (.01) of a gram

to three one hundredths (.03) of a gram. If one were to sell the heroin in bags containing the heavier amount of .03 grams, Detective Banks testified that, depending on how it was packaged, and considering the 300 total grams of heroin recovered in this case:

> Through one gram you get about 33 bags. Times that by 300, that's 9,900 bags. Out of that 9,900 bags, you multiple that by $20 a bag, you can make up to $198,000 worth of U.S. currency from this 300 grams.

If one were to break the heroin down further, such that each bag only contained .01 grams, Detective Banks opined the heroin recovered in this case could be worth as much as $300,000.00. Banks testified it was unusual to see a normal user with this much heroin.

Detective Banks was also asked to consider the transcripts of the recorded phone calls in this case. Based on a recorded conversation between appellant and Howard, Banks opined that appellant was upset that Howard took the items to Ennis because appellant thought "it's too much for him to handle." Banks also believed that another call between appellant and Ennis involved appellant informing Ennis that some of his clients would "go to Frank to purchase the heroin while he's incarcerated." Banks concluded by offering his opinion that the evidence was consistent with the distribution of heroin.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the circuit court erred by limiting the amount of time available for closing argument. The State responds that appellant acquiesced to the time limit and that the court properly exercised its discretion because the limitation was reasonable. Although we disagree with the State's assertion that appellant acquiesced to the time limit, we nonetheless affirm the circuit court's ruling because the limit that it imposed was reasonable.

After jury instructions, the circuit court informed both parties of a time limit for their closing arguments. By that time, appellant had discharged defense counsel and was representing himself. The following transpired:

> THE COURT: All right, I'm imposing a time limit on your closing arguments, too. I see no reason why 15 minutes is not enough.
>
> [APPELLANT]: 15 minutes ain't enough for me. I got several issues to argue on different witnesses. 15 minutes might take one.

After reviewing the verdict sheet, the court clarified the time limits:

> THE COURT: All right. Now, I'm going to put a time limit. The State has to prove – they have the burden of proof. [The prosecutor] has the right to argue twice. He goes first, [Appellant] goes next and [the prosecutor] if he wants can rebut. Well, actually I'll give you the same amount of time, I'll give you each 20 minutes.
>
> [APPELLANT]: What if it takes longer than 20 minutes? How can you dictate how much time it takes?
>
> THE COURT: I think you can explain your position very well in 20 minutes.

> [APPELLANT]: I'm going to try. But I want to make sure I get everything I need to get.

After the State ended its opening remarks, the circuit court reminded appellant that he had "20 minutes, if you want to use it," and appellant replied, "I got more than that." Based upon this record, we cannot say that appellant acquiesced in the court's ruling. Nonetheless, we conclude that the court properly exercised its discretion in imposing reasonable limits on closing argument in this case.

Although appellant represented himself at trial, courts have recognized that the opportunity to present closing argument is part of the constitutional right to counsel. *See Holmes v. State*, 333 Md. 652, 657 (1994) (It is well settled "that a criminal defendant's Sixth Amendment right to counsel guarantees, in part, an opportunity of counsel to present closing argument at the close of the evidence") (citation omitted). In *Herring v. New York*, 422 U.S. 853 (1975), the Supreme Court addressed the importance of closing argument, explaining:

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt. *See In re Winship*, 397 U.S. 358 [(1970)].
>
> The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of the case will best promote the ultimate objective that the guilty be convicted and the innocent go free. In a criminal trial, which is in the end basically a factfinding process, no aspect of such advocacy could be more important than the opportunity finally to

> marshal the evidence for each side before submission of the case to judgment.

Id. at 862. *See also United States v. Cronic*, 466 U.S. 648, 655-56 (1984) ("The substance of the Constitution's guarantee of the effective assistance of counsel is illuminated by" the principle that truth "'is best discovered by powerful statements on both sides of the question.'") (Citation omitted).

However, the Supreme Court has also recognized that "[t]he presiding judge must be and is given great latitude in controlling the duration . . . of closing summations," so that "[h]e may limit counsel to a reasonable time and may terminate argument when continuation would be repetitive or redundant." *Herring*, 422 U.S. at 862. Similarly, our Court of Appeals has held that a trial court may limit the duration of closing argument, as follows:

> The Court may in its discretion limit the time to be consumed by counsel in argument, and the only restriction is that reasonable time for argument must be allowed counsel. What constitutes reasonable time depends on the circumstances of each case and is within the trial court's discretion. This discretion is not ordinarily subject to review by an appellate court unless the time allowed is plainly arbitrary and amounts to an abuse of discretion.

Yopps v. State, 228 Md. 204, 207 (1962) (citations omitted); *see Comi v. State*, 202 Md. 472, 480 (1953) (observing that a time limitation on closing argument is a "matter . . . that rests in the sound discretion of the trial court"); *see generally Hunt v. State*, 312 Md. 494, 500 (1988) ("The conduct of criminal trials falls within the sound discretion of the trial judge which will not be disturbed absent a clear abuse of discretion"). An "'[a]buse of discretion' . . . has been said to occur 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding

rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 135 S. Ct. 284 (2014).

This case was relatively uncomplicated. First, the trial lasted only one day, from jury selection to the reading of the verdict. Second, the defense presented no testimony. Third, it was undisputed that a large amount of heroin was found. Lastly, the case turned on a single issue – whether appellant constructively possessed, *via* the exercise of dominion and control over, the heroin that was recovered. For these reasons, we are persuaded that the amount of time for closing argument, notably for both parties, was more than reasonable. The circuit court properly exercised its discretion in the matter.

II.

Appellant next challenges the circuit court's rulings that permitted the State to elicit that he was arrested following a traffic stop involving Howard, and that he made certain statements to Howard while in custody. Appellant argues that this constituted inadmissible evidence of other crimes or prior bad acts. The State responds that this issue was not properly preserved because appellant did not object when the court ruled on the State's motion *in limine* and did not offer timely objections during trial. And, although the State does not address the merits of appellant's claim, it argues that any error was harmless beyond a reasonable doubt, observing that similar evidence came in without objection. We shall first set forth the pertinent argument, testimony, and rulings before addressing the parties' contentions.

Here, after jury selection, but before opening statements, the prosecutor informed the circuit court as follows:

> [PROSECUTOR]: Your Honor, the jury having now retired, I would ask – there are some issues about this case, how it evolved, first that the Defendant was arrested on an outstanding arrest warrant. I'm going to ask the witnesses on the record not to address the nature of the arrest warrant at the time of his arrest. He was also arrested for felony CDS and firearms charges; I would ask the witnesses to refrain from commenting on those charges which have since come to a conclusion.
>
> Further the Defendant is and has been incarcerated this whole time. Typically that is not information that we wish to bring before the jury. However, the nature of this case is within the first three or four days after his incarceration, before he attempted to post bond there were intercepted jail calls. So the State has to bring out the fact that at least for a period of time he was incarcerated after his arrest on that outstanding warrant, and I would move *in limine* to allow the State's witnesses to so discuss that fact.
>
> THE COURT: As long as they don't discuss the reason for the warrant.
>
> [PROSECUTOR]: Yes, Your Honor.

The State's first witness was Maryland State Trooper Kenneth Moore. The State inquired as follows:

> Q. Did there come a time when you were requested by another law-enforcement unit, the Maryland State Apprehension Team, to locate a wanted subject identified as Antoine Belizaire?
>
> [APPELLANT]: Objection.
>
> THE COURT: What's the basis of your objection?
>
> [PROSECUTOR]; Your Honor, may we approach?
>
> THE COURT: You don't need to approach.
>
> [APPELLANT]: He's talking about something that doesn't have nothing to do with this case.

THE COURT: That awaits to be seen, and you have a right to cross-examine. Overruled.

Go ahead.

[APPELLANT]: How is that overruled?

THE WITNESS: Yes, sir, I did.

Testimony continued:

Q. And did you participate in a pursuit and apprehension of Mr. Belizaire?

A. Yes, sir, I did.

Q. And do you see Mr. Antoine Belizaire in the courtroom today?

A. He's seated at defense table in the green shirt.

[PROSECUTOR]: Your Honor, may the record reflect that the witness identified Mr. Belizaire, the Defendant?

[APPELLANT]: We need to approach.

THE COURT: There's no need to approach, I can hear you from here.

What's the basis for your objection, if you're making an objection?

[APPELLANT]: He's talking about another case that doesn't pertain to this case.

THE COURT: Well, that waits to be seen. The objection is overruled.

Direct examination then focused on appellant's statements:

Q. Did there come a time, sir, when you heard or observed Mr. Belizaire to make a statement during the course of his either transport or booking process?

A. A combination of both, yes, sir.

[APPELLANT]: Objection.

THE COURT: Overruled.

Q. Could you describe for the Court that statement and how that came about?

A. Once while at the holding cell at the Maryland State Police Barrack in Salisbury, here in Wicomico County, Maryland, he was being removed for transport to the Wicomico County Detention Center to be booked upon. As he was being removed from it in the hallway area he yelled to a female, another subject that was taken into custody at the time of his apprehension.

Trooper Moore testified that this female was Howard, appellant's girlfriend, who was apprehended at the same time as appellant. Appellant then interjected:

[APPELLANT]: Object to his whole testimony.

THE COURT: Okay. Overruled.

[APPELLANT]: This is talking about another case, this is not even talking about the case at hand.

THE COURT: Well, that waits to be seen.

Overruled.

Trooper Moore then testified:

Q. Sir, can you again state whatever statement Mr. Belizaire made to Ms. Howard at that time?

A. He yelled to her in the hallway as we were changing from cell block to leave the Barrack, hey, don't worry, I'll take care of this, this is mine.

Q. Did there come a time, another time later that same day when he made a similar statement to Ms. Howard?

A. Once we were at the Wicomico County Detention Center he was being taken in through the slider in the central lockup area. Again a very similar statement, he yelled to Ms. Howard, who was also in the sally port area waiting to be booked, hey, very similar statements, don't worry, you know, this is mine. You know, come on, Moore, you know this is mine, she ain't got nothing to do with this.

After concluding direct examination, appellant began cross-examination of Trooper Moore as follows:

BY [APPELLANT]:

> Q. Okay. Now what I was supposed to have said, don't worry about, it's mine and all that stuff. Does that have anything to do with the case here today?
>
> A. Ultimately, yes.

Appellant then asked the trooper about a "proofing section" with Howard from September 25th.[2] After the State asked to approach, and after appellant continued to argue that "the thing is already tainted, he brought up something that doesn't have nothing to do with what we're here for today," Trooper Moore continued by testifying he was unfamiliar with any contact with appellant or Howard in September. Cross-examination then continued:

> A. You were taken into custody on April 22nd.
>
> Q. At any date, on the 22nd was the only time you were involved?
>
> A. That was of April, yes, sir.
>
> Q. That was a case that's non-related to today, it had not – has nothing to do with today.
>
> A. It does.
>
> Q. There's two separate cases. Did I go for a trial with that already with you?
>
> A. Yes, sir, you did.

[2] It became apparent later during trial that "proofing section" actually referred to a "proffer session" between police, Howard, and Howard's attorney.

Q. For that whole case?

A. Yes, sir, you did.

[APPELLANT]: Right. That's why I'm saying he just sit up there and said that. He already tainted to [sic] the jurors.

[PROSECUTOR]: Objection.

[APPELLANT]: About something else.

[PROSECUTOR]: The Defendant is testifying.

THE COURT: Well, you're the one talking about another trial.

[APPELLANT]: He's the one – that's what he's questioning him on another trial. He got up there and questioned him on another trial.

THE COURT: All right, you made your point. You may step down, Trooper Moore, thank you very much.

Howard testified that she was arrested in April 2014. She was also asked about appellant and testified:

Q. Was Mr. Belizaire also arrested at the same time?

A. Yes.

Q. And he had an outstanding warrant, if you know?

[APPELLANT]: Objection, same thing. He keeps doing it.

[PROSECUTOR]: I'll withdraw it.

Appellant argues that the circuit court erred because this was inadmissible other crimes evidence. Specifically, appellant contends:

> [T]he testimony here could only serve to show that Appellant had a criminal disposition and was far more prejudicial than probative. The fact that Appellant was involved in another crime with Ms. Howard that required that police chase him down to arrest him and after which he claimed sole responsibility had no special relevance to the case at bar. The mere fact that he was incarcerated such that he could place the relevant phone calls that were subsequently recorded was all that was necessary.

The short answer to appellant's contention is that this issue was waived. During cross-examination of Sergeant Widdowson, appellant admitted the officer's report as an exhibit. That report, admitted at trial, contained the following:

> On April 22, 2014, S/Tpr. Moore and Cpl. Hagel were assisting in the apprehension of Antoine Belizaire relating to an outstanding arrest warrant. During Belizaire's arrest, Belizaire fled on foot and was apprehended after discarding a Ruger .40 caliber handgun, approximately 3.3 grams of marijuana and 40.3 grams of heroin. Belizaire was charged with the additional crimes and released to the custody of the Wicomico County Detention Center. Demetria Howard had been operating the vehicle which Belizaire was riding in and she was also arrested as she fled in the vehicle as officers attempted to apprehend Belizaire.

Appellant also introduced, and the circuit court admitted, the report of Maryland State Police Corporal Richard Hagel. That report provided additional details of appellant's prior arrest, to wit:

> As I pursued, I observed a black Dodge truck come to a stop in the roadway of Mohawk Avenue and observed Deputy G. Hilliard exit and order Belizaire to get on the ground at gunpoint. I then rounded a 6 foot privacy fence to observe Belizaire standing in the yard. I then handcuffed him and observed a ball cap on the ground next to him.
>
> A search of the ballcap revealed a loaded handgun and numerous glassine baggies of a brownish powder substance, which I recognized to be suspected heroin. Belizaire was transported to the barrack by Trooper Bowie. During which Belizaire began to vomit.
>
> I responded back to where the vehicle came to rest and observed the female driver to be in custody and in a sheriff's deputy vehicle. She was identified as Demitria Linette Howard, who was 7 months pregnant. She was transported to the barrack by Tpr. Buck.

In addition, at the close of all the evidence, and just prior to closing arguments, appellant introduced, and the circuit court admitted, a transcript of his own recorded telephone calls from the jail. In part of that recording, appellant spoke with a person

identified as Ms. Speaker, presumably Ms. Howard. At one point during that conversation, appellant admitted that he left "Frankie house" and "I rolled my gun up, drove home," thereby admitting possession of a gun. However, more revealing was the following exchange:

> [APPELLANT]: I'm tripping. Like, they got me so motherfucking mad, like, as long as they give me under 15 years, I'm cool. I'll be home in seven or eight years, but shit, (inaudible). Twenty not too bad.
>
> MS. SPEAKER: (Inaudible).
>
> [APPELLANT]: He can or whatever. I got to get the lawyer to get the guidelines done right, everything. But the probation shit, I can work that myself in the law library if I don't get my time back off of that. I'm going to get my time back for the probation (inaudible). And then the case at the fountain, I'm beating that. So all I'm looking at is, like, the shit in the truck and (inaudible). But the only reason they charge me is because they had no way to go in the house. *That's why they charged me. Because I didn't forget nothing but a bag of weed in my jacket*, *and I fessed up* to what I told (inaudible) shit, man, (inaudible). Moore come in the station with it. *I'm telling them, anything you found is mine*, and they call you because (inaudible) dropped something, but I didn't drop nothing. I just forgot my cigarette pack. And when I was digging in my thing. *I didn't get all the weed*.
>
> MS. SPEAKER: (Inaudible).
>
> [APPELLANT]: I would have (inaudible). I ain't thinking (inaudible) my phone. They was saying that I never – I didn't do (inaudible). I was looking at their stomach and I was looking at (inaudible). And *she ain't got nothing to do with this shit, huh.*
>
> MS. SPEAKER: (Inaudible), like.
>
> [APPELLANT]: Yeah. I could have did that, too, but –
>
> MS. SPEAKER: (Inaudible).
>
> [APPELLANT]: but you see when I was ready to do that and that motherfucker (inaudible). Do you know what I mean?

MS. SPEAKER: (Inaudible) on me.

[APPELLANT]: Yeah. That's why I stopped. You feel me? The black and white truck, he came on the side like he was ready to ram you or (inaudible) shit. (Inaudible). And then, you know, I pulled that straight up like that, that's why I fucking had to run with it like a football. I (inaudible).

MS. SPEAKER: This shit crazy.

[APPELLANT]: I know. . . .

(Emphasis added).

In *Yates v. State*, 429 Md. 112, 120-21 (2012), the Court of Appeals stated, "[w]here competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received." (Citation omitted); *see DeLeon v. State*, 407 Md. 16, 30-31 (2008) (holding that a defendant waived an objection to what he claimed was irrelevant and highly prejudicial testimony about his purported gang affiliation because "evidence on the same point [was] admitted without objection" elsewhere at trial); *Grandison v. State*, 341 Md. 175, 218-19 (1996) (the admission of objectionable testimony will not constitute reversible error on appeal if the essential contents of that testimony are otherwise presented to the jury without objection); *see also Hunt v. State*, 321 Md. 387, 433 (1990) ("[A] party waives his objection to testimony by subsequently offering testimony on the same matter"); *Peisner v. State*, 236 Md. 137, 144-45 (1964) (where testimony that was objected to later comes in without objection, either through appellant or another witness, the question has not been preserved for appellate review); *Wilder v. State*, 191 Md. App. 319, 346 (2010) (concluding that

defendant waived his objection to certain testimony when similar testimony came in without objection during testimony of a different witness).

In this case, evidence of the details of appellant's arrest came in through appellant's own exhibits. Not only did the appellant, through introduction and the admission of these items of evidence, inform the jury that he was previously arrested, his recorded phone calls show that he admitted his guilt to that underlying offense by informing police "she ain't got nothing to do with this shit, huh." Although the State contends these items of evidence amount to harmless error, we are persuaded that the better characterization is that appellant waived any challenge to the evidence concerning his prior arrest.

Appellant's failure to preserve the issue is further evident throughout the course of the trial. Appellant offered no objection after the circuit court implicitly granted the State's motion *in limine* to admit information about appellant's arrest on an outstanding arrest warrant, as well as appellant's recorded telephone calls while he was incarcerated. And, appellant did not timely object when Trooper Moore testified that he participated in the "pursuit and apprehension" of appellant, nor when Moore later testified that appellant yelled that "don't worry, I'll take care of this, this is mine" to Howard and "come on, Moore, you know this is mine, she ain't got nothing to do with this" to Trooper Moore while at the detention center.

Maryland Rule 8-131(a) provides, in pertinent part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial

> court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The Court of Appeals has stated that "it is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *see also* Maryland Rule 4-323(a) (requiring a timely objection when evidence offered); *Prince v. State*, 216 Md. App. 178, 194 ("[T]he objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time . . ."), *cert. denied*, 438 Md. 741 (2014). And, an objection must be taken each time the evidence is elicited. *See State Rds. Comm'n v. Bare*, 220 Md. 91, 94-95 (1959) ("specific objection should be made to each question propounded, if the answer thereto is deemed to be inadmissible"); *Wimbish v. State*, 201 Md. App. 239, 261 (2011) ("[T]o preserve an objection, a party must either 'object each time a question concerning the [matter is] posed or . . . request a continuing objection to the entire line of questioning'") (citation omitted); *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (objection must be to every question on point; sporadic objections do not suffice to preserve issue). These requirements apply equally to a defendant who chooses to represent himself at trial. *Grandison*, 341 Md. at 195.

Furthermore, although appellant stated that he objected "to this whole testimony," the circuit court never granted him a continuing objection as to the circumstances surrounding his earlier arrest. *See Kang v. State*, 393 Md. 97, 120 (2006) (ultimately holding that petitioner did not obtain a continuing objection merely by offering one; the

court needed to expressly grant the continuing objection). For all these reasons, we are persuaded that this issue was not properly preserved for our review.

Even if preserved, we conclude that the circuit court did not abuse its discretion. Appellant challenges the admission of the evidence concerning his prior arrest, including statements he made to Howard immediately following that arrest, on the grounds that this evidence "had no special relevance to the case at bar."[3] "Subject to several exceptions, evidence of other crimes or bad acts is not admissible in Maryland." *Hurst v. State*, 400 Md. 397, 406 (2007) (citations omitted); *see also Burris v. State*, 435 Md. 370, 385 (2013) (observing that Md. Rule 5-404(b) is a rule of exclusion) (citations omitted). Maryland Rule 5-404(b) reflects this principle by "restrict[ing] the admissibility of evidence of 'other crimes, wrongs, or acts' unless that evidence has special relevance to the case." *Odum v. State*, 412 Md. 593, 609 (2010) (citation omitted). In short, the "plain language of Md. Rule 5-404 (b) does not permit the admissibility of propensity evidence." *Hurst*, 400 Md. at 417. Evidence of other crimes may be admissible, however, if the evidence has "'special relevance, *i.e.* is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character.'" *Hurst*, 400 Md. at 407-08 (quoting *Harris v. State*, 324 Md. 490, 500 (1991)).

[3] Appellant concedes that the recordings and transcripts of his telephone calls from jail were admissible, noting that "[t]he mere fact that he was incarcerated such that he could place the relevant phone calls that were subsequently recorded was all that was necessary."

But:

> [T]he strictures of "other crimes" evidence law, now embodied in Rule 5-404(b), do not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes. 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.").

Odum, 412 Md. at 611-613 (footnote omitted); *see also Silver v. State*, 420 Md. 415, 435-46 (2011) (evidence that was "intertwined and part of the same criminal episode" did not "engage the gears of 'other crimes' evidence law," even though it may "'show some possible crime in addition to the one literally charged'") (quoting *Odum*, 412 Md. at 611).

Here, part of the State's evidence against appellant were the telephone calls recorded from the jail. The fact that he was arrested prior to making those calls explained the circumstances in which the calls were recorded and, therefore, was intertwined with the same criminal episode. As appellant recognizes, the circuit court properly exercised its discretion in admitting evidence that appellant was arrested and in custody when the recordings were made.

However, we agree with appellant that his statements to Howard and Trooper Moore at the detention center, apparently taking responsibility for the conduct at issue in the other case, are more problematic. But, it is arguable that, if not entirely intertwined with the underlying offense in this case, they were especially relevant to the conspiracy charges against appellant as evidence relating to a common scheme or plan. *See, e.g., Manuel v. State*, 85 Md. App. 1, 15 (1990) ("Conspiracy involves a common scheme or design that constitutes a single, continuing conspiracy evidenced by a series of acts in furtherance of the criminal scheme.") (Citation omitted).

Further, to the extent that this may have constituted other crimes evidence, the facts of that other case arguably were "clear and convincing" as they could be established, not only through judicial notice of the circuit court's records, but also by appellant's admission during cross-examination of Trooper Moore that there was another trial in that case. *See Henry v. State*, 184 Md. App. 146, 168-69 (2009) (in order to decide whether a defendant's involvement in another crime is established by "clear and convincing evidence," an appellate court will look "only at the legal question of whether there was some competent evidence which, if believed, could persuade the fact finder as to the existence of the fact in issue"), *aff'd*, 419 Md. 588 (2011).[4]

[4] As indicated, the other case referenced is presently pending before this Court as *Belizaire v. State*, No. 122, Sept. Term, 2015. And, the record from the circuit court is also subject to judicial notice via the Maryland Judiciary website. *See State v. Belizaire*, Wicomico County Case Number 22K14000551. *See also* Md. Rule 5-201(c) (permitting a court to take judicial notice of adjudicative facts, whether requested or not); *Marks v.*

Finally, as for the required weighing of other crimes evidence, we observe that "there is a 'strong presumption' that judges properly perform their duties in weighing the probative value and prejudicial effect of so-called 'other crimes' evidence . . . trial judges 'are not obliged to spell out in words every thought and step of logic' in weighing the competing considerations." *See Ayers v. State*, 335 Md. 602, 635-36 (1994) (quoting *Beales v. State*, 329 Md. 263, 273 (1993)). After hearing from the State on its motion *in limine*, the circuit court stated "[a]s long as they don't discuss the reason for the warrant." It is apparent that the court properly assessed, and appropriately limited, the possible prejudicial impact of having this jury learn details of why appellant was arrested in the prior case. The fact that they may have learned more through appellant's own introduction of additional details of that case does not warrant any further remedy. We conclude the circuit court properly exercised its discretion under the circumstances herein.

III.

Appellant also asserts that the circuit court erred in ruling that he did not have a meritorious reason to discharge his attorney and should have appointed replacement counsel. The State responds that the court properly exercised its discretion. We agree.[5]

Criminal Injuries Comp. Bd., 196 Md. App. 37, 79 n.17 (2010) (judicial notice of information from Case Search).

[5] This claim is identical to the one appellant raised in *Belizaire v. State*, No. 122, Sept. Term, 2015.

At a pretrial motions hearing, appellant expressed dissatisfaction with his attorney, as follows:

> [APPELLANT]: I don't think I'm being properly represented. At all. I just got all this stuff last week. My understanding in court last week she been had this stuff for a couple months, last – and I still ain't seen everything yet. They bring me two different discoveries, all of it in one, you know what I'm saying? I ain't had enough time to do anything with it. She's not doing anything for me. You know what I mean? I think she's just, they together, like, she just trying to throw me. I don't want her to represent me.
>
> THE COURT: Okay. Let me ask you some questions, sir.
>
> [APPELLANT]: She don't want to get stuff suppressed. She don't want to do this and that. She trying to cram this in on me in the day or two before court. Shit ain't working – I mean, excuse me, I ain't never seen nothing like this before in my life.

The circuit court then inquired of defense counsel, and counsel agreed that she had reviewed the discovery in this case, except for the recorded phone calls that were intercepted at the jail while appellant was incarcerated. Counsel stated that she had reviewed discovery with appellant, with the exception of these aforementioned phone calls. And, appellant confirmed that he and counsel reviewed "the majority" of the discovery. The State responded that the remaining discovery concerning the phone calls from the jail would be provided forthwith.

Defense counsel also informed the circuit court that, based on her review of the facts in appellant's other case, including that appellant abandoned contraband during a foot pursuit, appellant did not have standing to challenge its seizure. As for the other evidence seized from the house in this case, defense counsel also stated that appellant did not live there and there would be no legal basis to challenge the search and seizure. As

further explanation for her decision not to seek to suppress appellant's statements, counsel indicated that appellant did not make any statements in connection with this case other than the recorded phone calls.

The circuit court then returned to appellant and asked him if he wanted to hire private counsel, to which appellant replied:

> [APPELLANT]: No, I got, I'd rather go in there by myself than go out like this. Or they can find me one that do something, reschedule something or something, because I ain't had time to go over nothing. For real. And then it's things in there I want suppressed, she's saying that she don't want to do this or that. And we just not . . . it's evidence and different stuff that shouldn't be in there or things of that nature that doesn't add up, and she's not helping me no way with it. We're not getting along at all.
>
> THE COURT: Okay.
>
> [APPELLANT]: I say tomato, she say tomato. I just feel like, you know . . .

Appellant informed the circuit court that he could not hire private counsel, but he wanted someone else from the Office of the Public Defender to assume representation. The court then asked appellant, assuming that the Public Defender did not assign another attorney to represent him in this case, whether he wanted to represent himself. Appellant responded, "Not really . . . ." On this point, the court inquired of defense counsel as follows:

> THE COURT: All right. So if you terminate your appearance today, Counsel –
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT : – at his request, what will his options be from the perspective of the Public Defender's Office?

> [DEFENSE COUNSEL]: Your Honor, if you find that there is no good cause, he won't have a Public Defender.
>
> THE COURT: And if I were to find that there was good cause?
>
> [DEFENSE COUNSEL]: Then he would be assigned someone else.

The court then found:

> THE COURT: All right. The fact that you disagree with the legal conclusions of your counsel is not good cause in my opinion. So to the extent that you have a legal opinion that is not the same as your counsel, I don't believe that that is good cause for you to terminate your counsel.

Appellant maintained that he was not willing to work with his assigned Public Defender and wanted to discharge her. After ascertaining that there were still questions about whether appellant had seen all the discovery in this case, the circuit court went over the charging documents in order to ensure that appellant was aware of the charges, the maximum penalties and any enhanced penalties that were facing him in connection with this case. Appellant responded to the court's inquiries, indicating that he understood the charges against him.

The circuit court then advised appellant of the importance of having a lawyer represent him at every stage of the proceedings. He was also told that, if he appeared without a lawyer, the case would proceed to trial in any event. Appellant indicated that he understood these advisements.

At that point, the circuit court noted that appellant had not been provided with all the discovery in this case and that there was "some merit to your desire to speak further with your counsel." The court also indicated that it would grant a continuance so that appellant could still discuss this case and review all of the evidence with his assigned

Public Defender. Appellant was advised that, should he still wish to discharge assigned counsel, the Public Defender would be unlikely to assign someone else to represent him in this case. The court, therefore, reserved ruling on appellant's motion until after he had reviewed all the discovery, including transcripts of the recorded phone calls with presently assigned counsel. The court summarized its ruling:

> It shall reflect that I fully advised the Defendant of his right to counsel and complied with Maryland Rule 4-213 and 4-215, subsection small (a), 1 through 4. And that for today's purposes I'm denying his motion to discharge his counsel, but I'm leaving open that possibility that he may again make that request.
>
> In the meantime I'm ordering the defense attorney of record to provide to him and review with him, so that he and I are sure that all of the discovery that has been provided to him has been reviewed with him and his counsel, and that he still wishes, should that be his desire, to terminate her services if that's the desire.
>
> Or alternatively it may very well be that the Public Defender's Office, the District Public Defender is here, may choose to reassign a lawyer for you, sir. All right. So just keep an open mind and we will see where we stand on the 24th.

At the next hearing, the circuit court summarized the aforementioned proceedings, then added that it had received a letter from the District Public Defender. The District Public Defender, who was in court when appellant originally made his request to discharge counsel in this case, responded that she:

> was confident that [appellant] is receiving appropriate counseling and representation from his assigned counsel. His attorney, Patricia Harvey, Esquire, has many years of experience and is a very accomplished trial attorney. In addition, Ms. Harvey spent numerous hours reviewing the case with [Appellant] at the Wicomico County Detention Center. I do not intend to reassign this matter to other counsel unless this Court finds there is a meritorious reason to discharge Ms. Harvey.

After summarizing the District Public Defender's position in this matter, the circuit court ascertained that the State made a plea offer to appellant but that offer had since expired. Initially, appellant's assigned Public Defender advised the court, at that time, that she had not spoken to appellant about this plea offer. She had, however, reviewed some, but not all, of the phone calls recorded at the jail with appellant and had asked the State to have them all transcribed. She also informed the court, later in the hearing, that she had met with appellant for an aggregate total of between fifteen to sixteen hours. Appellant confirmed that he had listened to the recordings that were provided.

The circuit court addressed appellant and asked him if he wanted to speak to his still assigned Public Defender about the State's plea offer, and appellant replied that "[w]e talked about that already. I don't want to talk about that no more." Appellant then clearly indicated that he was rejecting the plea offer.

Appellant disagreed with his assigned counsel's assessment of his standing to challenge the legality of the seizure of evidence in this case. Appellant also wanted to "impeach" the witnesses that testified before the Grand Jury and wanted the transcripts from that proceeding. The circuit court determined that there were no such transcripts.

Appellant then informed the circuit court that he and his assigned Public Defender disagreed over several matters of trial strategy. These included, but were not limited to: subpoenaing certain witnesses that were involved with obtaining a plea deal with a codefendant; challenging the existence and the analysis of the narcotics that were recovered in this case; an alleged illegal entry into someone's house by the "Gang Task

Force" or the "Narcotics Task Force;" suppression of a witness's statement, following this entry, that appellant believed was coerced; and disclosure of the identity of a confidential informant. Despite these disagreements, appellant confirmed that he had met with his assigned Public Defender prior to trial. After appellant's reasons were placed on the record, the following ensued:

> THE COURT: Well, the question is, do you wish to dismiss her and represent yourself?
>
> [APPELLANT]: If you all can't provide another one for me, yeah, I guess.
>
> THE COURT: So you wish to represent yourself, if the choice is between yourself and Ms. Harvey?
>
> [APPELLANT]: Yeah.
>
> THE COURT: All right. [Appellant], I don't believe that there is an attorney that is going to be available that's going to satisfy the demands that you have made in terms of what your expectations are, because the attorney has to use their judgment about the law. And the fact that you may disagree with the law does not prevent them from reaching legal conclusions that are, that you don't agree with.
>
> So, they're required to use their expertise. Now, Ms. Harvey could put on the record her training and experience and the fact that she's represented many, many people. She's been to law school. She's been doing nothing but felony and serious Circuit Court-level trials as a Public Defender for years now. And I cannot conclude from what you have discussed and the type of issues that you've raised that Ms. Harvey has not provided you with legal representation that is adequate.
>
> What I can conclude is that you disagree with her judgment. And you certainly are entitled to disagree with her judgment if you wish to represent yourself. However, if you were to retain her it would be her decision as to which of the lawyers – or which of the known witnesses should be called and for what purpose and which would be beneficial to you.

> You certainly have the right to determine important matters like how you plea and whether you have a jury trial or a court trial and other fundamental rights. But when it comes to matters regarding legal conclusions, she is required to use her best legal judgment. And she will not be able to satisfy your demands if your legal judgment and hers are not the same. She is not expected to agree with you.

After further discussion, the circuit court granted appellant's request to discharge counsel, as follows:

> I'm satisfied that Ms. Simpson [the District Public Defender] has thoroughly reviewed, as the District Public Defender, whether the Defendant should be entitled to an alternate or a substitute Public Defender. I have heard from the Defendant. I have considered all of the materials that occurred at the last hearing in front of me that was scheduled for motions and the instant one. I am going to grant the Defendant's request to discharge his counsel. And she and the Public Defender's Office is discharged.
>
> He understood that by discharging Ms. Harvey he was discharging the Office of the Public Defender. I find that it is not a meritorious discharge. It would not be a recommended discharge. But it is his right to discharge her. And so I'm going to permit him to do so.

The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *See Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963).[6] "If the defendant cannot afford private representation, then he or she is entitled to an effective defense from a public defender or court appointed attorney." *Gonzales v. State*, 408 Md. 515, 529-30 (2009) (citation omitted); *see also Dykes v. State*, 444 Md. 642, 648 (2015) ("[T]he defendant has a right

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

to counsel appointed at government expense" (citations omitted). "If the defendant can afford private representation, however, then the defendant has a right to the attorney of his or her choice." *Gonzales*, 408 Md. at 530 (citation omitted).

In addition, a defendant in a criminal prosecution also has a constitutional right to have effective assistance of counsel and the corresponding right to reject that assistance and represent himself. *Powell v. Alabama*, 287 U.S. 45, 71 (1932) (recognition of the constitutional right to the effective assistance of counsel); *see also Dykes*, 444 Md. at 648 ("The right to counsel 'guarantee[s] an effective advocate for each criminal defendant rather than . . . ensur[ing] that a defendant will inexorably be represented by the lawyer whom he prefers.'") (Quoting *Alexis v. State*, 437 Md. 457, 475 (2014), in turn quoting *Wheat v. United States*, 486 U.S. 153, 159 (1988)).

As part of the implementation and protection of this fundamental right to counsel, the Court of Appeals adopted Maryland Rule 4-215, "which explicates the method by which the right to counsel may be waived by those defendants wishing to represent themselves . . . ." *Broadwater v. State*, 401 Md. 175, 180 (2007); *accord Dykes*, 444 Md. at 651. The requirements of the Rule are "mandatory," required "strict compliance," and "a trial court's departure from the requirements of [Md.] Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012) (citations omitted). "We review *de novo* whether the circuit court complied with [Md.] Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012). However, so long as the court has strictly complied with Md. Rule 4-215(e), we review the court's decision regarding whether to

grant or deny a defendant's request to discharge counsel for abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013).

Maryland Rule 4-215(e) provides as follows:

> 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.

Appellant does not contend that the circuit court erred in its technical application of this Rule. Instead, appellant disagrees with the court's finding that his reason for wanting to discharge counsel was "meritorious." The Court of Appeals has suggested that "meritorious" is simply whether there was "good cause" to support the request. *See Dykes*, 444 Md. at 652. In the event there is a meritorious reason, the Court of Appeals suggests the following remedy:

> If the court finds that the defendant has a meritorious reason for discharge, the court is to:
>
> • permit discharge of counsel
>
> • continue the action, if necessary
>
> • advise the defendant that, if new counsel does not enter an appearance, the defendant will be unrepresented

> • conduct further proceedings in accordance with Rule 4-215(a) which governs a defendant's first appearance in court without counsel – if there has not been prior compliance
>
> Thus, once a meritorious reason for discharge is found, the situation reverts – insofar as concerns the right to counsel – to that of a freshly arraigned, unrepresented defendant. The court is to "grant the request [for discharge] and, if necessary, give the defendant an opportunity to retain new counsel." [*Williams v. State*, 321 Md. 266, 273 (1990).] In the case of an indigent defendant, this means an opportunity for new appointed counsel.

Dykes, 444 Md. at 652-53.

Here, appellant's reason for wanting to discharge counsel was because there was "a breakdown in communication" between them, he did not "trust his counsel's judgment," did not have "confidence in her ability to represent him," was trying to "coerce him to take a plea deal," and she would "not share discovery with him in a timely manner and did not take his requests seriously."

Appellant's contentions are similar to the ones under consideration in *Alford v. State*, 202 Md. App. 582 (2011). There, Alford argued that discharge was warranted because, not only was his attorney not competent, but also, his attorney "(1) failed to investigate or call at trial three witnesses appellant had identified; (2) failed to sufficiently communicate with appellant before trial; (3) failed to file motions requested by appellant; and (4) had a poor relationship with him." *Alford*, 202 Md. at 607. We upheld the trial court's findings that these were not meritorious reasons for Alford to discharge his attorney. *Id.* at 609-10. *See Dykes,* 444 Md. 668 n.16 (noting that appellant's distrust of his attorney was not, *per se*, a meritorious reason for discharge).

We reach the same conclusion in this case. The circuit court considered appellant's reasons and found them to be wanting. We also note that, while the "ultimate decision" on how to proceed in a criminal case falls to the defendant, strategic decisions are ordinarily left to the province of the attorney after consultation. *See, e.g.*, *Treece v. State*, 313 Md. 665, 672-74 (1988). Ultimately, we perceive no abuse of discretion in the court's findings or ruling on this issue.

IV.

Finally, appellant asserts that he could only be convicted of one count of conspiracy under these facts and that three of his conspiracy convictions must be vacated. The State agrees, as do we.

Here, appellant was indicted for, and convicted of, four charges of conspiracy: Count 5 - conspiracy with Howard to possess heroin - large amount; Count 6 - conspiracy with Ennis to possess heroin - large amount; Count 7 - conspiracy with Howard to possess heroin with intent to distribute; and, Count 8 - conspiracy with Ennis to possess heroin with intent to distribute. At disposition, the circuit court merged Counts 7 and 8 with Counts 5 and 6 and imposed no sentence on Count 6. Appellant was sentenced to twenty years, consecutive, on Count 5, conspiracy with Howard to possess heroin - large amount.

The Double Jeopardy Clause provides that no person shall "be subject to the same offense to be twice put in jeopardy of life or limb." U.S. Const., Amend. V. This constitutional guarantee is made applicable to the states through the Due Process Clause

of the Fourteenth Amendment. *State v. Long*, 405 Md. 527, 535-36 (2008) (citing *Benton v. Maryland*, 395 U.S. 784, 794 (1969)). And, double jeopardy "bars multiple punishments and trials for the same offense." *Scriber v. State*, 437 Md. 399, 408 (2014) (citation omitted).

Conspiracy in Maryland is a common law crime. The Court of Appeals discussed the elements of the crime of conspiracy in *Carroll v. State*, 428 Md. 679 (2012), explaining as follows:

> A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The agreement at the heart of a conspiracy need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy.

Id. at 696-97 (internal citations omitted).

The unit of prosecution of a conspiracy is the agreement or combination rather than each of its criminal objectives. A "conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy." *Tracy v. State*, 319 Md. 452, 459 (1990). It is "necessary to analyze the nature of the agreement to determine whether there is a single conspiracy or multiple conspiracies." *Mason v. State*, 302 Md. 434, 445 (1985) (citation omitted).

Although there were three participants in this conspiracy, we are persuaded that there was but one overall agreement in this case, namely, the possession with the intent to distribute a large quantity of heroin in Wicomico County, Maryland. This Court has stated that "[i]f a defendant is convicted of and sentenced for multiple conspiracies when,

in fact, only one conspiracy was proven, the Double Jeopardy Clause has been violated." *Savage v. State*, 212 Md. App. 1, 26 (2013). Accordingly, although two of the four conspiracy counts were merged for purposes of sentencing, and no sentence was imposed on the third count, we agree with the parties that, under these circumstances, three of appellant's conspiracy convictions should be vacated. *Id.* (vacating a conspiracy conviction to void a violation of double jeopardy).

CONVICTIONS ON COUNTS 6, 7, AND 8 VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE HALF BY WICOMICO COUNTY AND ONE HALF BY APPELLANT.