UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 146

September Term, 2016

MUNIR ABDULLAH ABDUSSAMADI,

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Woodward, J.

Filed: January 24, 2017

Appellant, Munir Abdullah Abdussamadi, was convicted by a jury in the Circuit Court for Prince George's County of three firearm offenses. Appellant was sentenced to fifteen years, with all but five years suspended, for illegal possession of a regulated firearm after having been convicted of a disqualifying crime. For illegal possession of ammunition, appellant was sentenced to a concurrent one year sentence. The remaining charge was merged for sentencing purposes. Appellant timely appealed and presents the following questions for our review:

> 1. Was the evidence sufficient to sustain the conviction on any count charging possession?
>
> 2. Was it an abuse of discretion to proceed with disposition, without inquiring why Appellant wanted to discharge his appointed counsel?

For the following reasons, we shall affirm.

BACKGROUND

On February 25, 2015, Detective Josefina Perdomo, of the Prince George's County Police Department, responded to the McDonald's restaurant located near 1400 Addison Road and saw appellant, who she identified in court. The parties stipulated that appellant had an open arrest warrant at the time. Detective Perdomo testified that, when she arrived in her vehicle, she saw appellant running away from other police officers. These officers were wearing vests that identified them as "Police." Videos of the pursuit through the McDonald's parking lot were played for the jury during trial.

As appellant ran by her car, Detective Perdomo saw appellant discard a heavy, metal object from his waistband. After he was apprehended, Detective Perdomo went to the area

where appellant dropped the item, and found a fully-loaded, two-tone silver and black handgun. At Detective Perdomo's instruction, the gun was recovered by Detective Clint Woodside, also of the Prince George's County Police Department. The gun, as well as the accompanying bullets found inside the gun's magazine, were admitted into evidence at trial. The gun was test-fired and determined to be operable.

The parties stipulated that appellant was disqualified from possessing a firearm and that, at the time of his arrest, the police were pursuing appellant for a lawful reason unrelated to this case. We may include additional facts as necessary in the following discussion.

DISCUSSION

I.

Appellant contends that the evidence was insufficient to prove that he possessed the handgun and ammunition recovered in this case. The State responds that Detective Perdomo's testimony, showing that appellant discarded the handgun during the police pursuit, was sufficient to sustain appellant's convictions. We agree with the State.

In reviewing appellant's contentions on appeal, we must decide "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *McClurkin v. State*, 222 Md. App. 461, 486 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)), *cert. denied*, 443 Md. 736, *cert. denied*, 136 S. Ct. 564 (2015). In applying this standard, we give "'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility

of witnesses.'" *Id.* (quoting *Harrison v. State*, 382, Md. 477 488 (2004)). Furthermore:

> "The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence – that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference. Further, we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence."

DeGrange v. State, 221 Md. App. 415, 420-21 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 718)).

Appellant challenges the proof of possession of the handgun in this case. This Court has explained:

> The term possession is defined as "to exercise actual or constructive dominion or control over a thing by one or more persons." Md. Code (2010 Supp.) § 5-101(u) of the Criminal Law Article. To prove dominion and control, "the 'evidence must show directly or support a rational inference'" that the accused "'exercised some restraining or directing influence'" over the drugs. Knowledge of the presence of drugs is required to exercise dominion and control. Such knowledge may be proven by circumstantial evidence and by inferences drawn therefrom.
>
> Pursuant to the terms of the statute, "possession may be constructive or actual, exclusive, or joint."

Kamara v. State, 205 Md. App. 607, 632-33 (2012) (emphasis omitted**)** (internal citations omitted); *accord State v. Gutierrez*, 446 Md. 221, 233-34 (2016).

The above law defining possession applies equally to cases involving handguns as

to other forms of contraband. As the Court of Appeals explained in *State v. Smith*, 374 Md. 527 (2003), cases dealing with the illegal possession of narcotics assist the analysis of cases involving handguns, "because to prove possession in those types of cases, actual or constructive dominion or control over the contraband must be proven and knowledge, generally, may be evidence in the determination of dominion and control." *Id.* at 549. Further, both types of cases depend on "'whether the evidence is sufficient *to allow an inference* that the defendant had knowledge of the contraband.'" *Id*. (emphasis in original) (quoting *Smith v. State*, 145 Md. App. 400, 407 (2002)); *see also Burns v. State*, 149 Md. App. 526, 546 (2003) (whether defendant was in possession of a handgun depends upon whether jury could find he was in actual, constructive, joint, or exclusive possession).

Here, Detective Perdomo saw appellant discard an object that later turned out to be a handgun. Such evidence was sufficient to show that appellant had actual and exclusive possession. Moreover, it matters not that there was only one person who saw appellant in possession, because "it is well established in Maryland that the testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153, *cert. denied*, 415 Md. 339 (2010); *see also Branch v. State*, 305 Md. 177, 184 (1986) (stating that "[t]he issue of credibility, of course, is one for the trier of fact").

Appellant also challenges the State's case by contending that there was no scientific evidence linking him to the handgun. But, it is clear that the lack of fingerprints or DNA evidence on the handgun goes to the weight of the evidence for the jury to determine, not its sufficiency. *See Garrison v. State*, 88 Md. App. 475, 478-79 (1991) (observing that, in

response to an argument that the "lack of fingerprint evidence or other physical proof" connecting appellant to the contraband constitutes insufficient evidence, the standard is whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"), *cert. denied*, 325 Md. 249 (1992). We hold that the evidence was more than sufficient to prove that appellant possessed the handgun and ammunition recovered in this case.

II.

Appellant next asserts that the trial court abused its discretion by not inquiring why he wanted to discharge his counsel at the start of the sentencing hearing. The State responds that the court properly exercised its discretion in this matter. We again agree with the State.

After appellant's conviction, the case was set for sentencing on December 3, 2015. Following a "Motion to Reset Time," filed by defense counsel, the sentencing was postponed until December 15, 2015. On December 15, 2015 the sentencing was postponed again because the pre-sentence investigation ("PSI") was incomplete.

Thereafter, at the hearing on February 11, 2016, appellant requested an additional postponement in order to obtain private counsel. Appellant personally addressed the trial court as follows:

> [APPELLANT]: I recently – well within the last month, I hired myself a private investigator to go on about the things that I thought was contrary to – well, I don't know during – it was a trial. I want to have – with the evidence that they came back with I still have to have private counsel, a paid attorney. **So I'm asking that you allow me to**

	hire this private attorney – this paid attorney to revisit the evidence that I have came [sic] with – the private investigator came forth with. I filed a motion early last week to ask for this continuance, but they said that it's not on the docket.
[DEFENSE COUNSEL]:	We just checked the court file, Your Honor. It's not in there yet.
THE COURT:	Okay**. How long will it take you to hire a private attorney?**
[APPELLANT]:	**Well, I was hoping to do so within** – between – within **a month** to have them ready, but within the next week or two weeks I should have my attorney should be hired.
THE COURT:	**All right. We will continue this for 30 days.** That – we will reconvene 30 days from now. **If there is any motions filed by that time, we'll take a look at them. If not, we will proceed with sentencing.**

(Emphasis added).

Thereafter, appellant, acting *pro se*, filed a motion for continuance. Such motion alleged that there was additional video footage, which he termed "invalidable [sic] evidence/discovery of new found evidence," from an additional surveillance camera located in the front of the McDonald's restaurant in question. In a handwritten order, the trial court denied the motion as moot because a continuance had already been granted.

At the sentencing hearing on March 18, 2016, appellant asked again to speak to the trial court:

[APPELLANT]:	My name is Munir Abdullah Abdussamadi.
[DEFENSE COUNSEL]:	Your Honor, [Defense Counsel] on behalf of Mr. Abdussamadi. My understanding is this is set for sentencing today. I'm not sure what he wants to tell the Court, but –
[APPELLANT]:	**I wasn't able to obtain a lawyer that I was looking for over the last time I was before you due to the fact that a family member of mine who was paying for my legal fees, I mean, is deceased now,** so I had to go ahead and take on whatever action I would like to present this to you, though, put this on the record while I also [sic] doing so, give my personal excerpt, verbal excerpt if you will allow.
THE COURT:	Well, here's the issue, that obviously you were represented by [Defense Counsel] during the trial, right?
[APPELLANT]:	Yes, sir.
THE COURT:	You're now represented by [Defense Counsel] during sentencing. **Are you saying that you don't want to be represented by [Defense Counsel] during sentencing?**
[APPELLANT]:	**I don't have no other –**
THE COURT:	**Choice?**

[APPELLANT]: **Right, I don't have any other choice now.**

(Emphasis added).

The trial court asked appellant for further clarification, and appellant replied:

> I would like to – what I'm trying to put on the record**, I'm asking the Court to review what I was trying to present**, which I asked for time to present because this court date was just – I was scratched last week off the list and this just so happened to pop up. I had my family members checking case search to find out when I was going to go to court so I could prepare myself, but all of a sudden just last night I was aware and nothing –

(Emphasis added).

After inquiring whether appellant was informing the trial court that he was not prepared for sentencing, defense counsel interjected as follows:

[DEFENSE COUNSEL]: Your Honor**, I think he wants a new trial**; is that correct? You're trying to convince the Court, but unfortunately, Your Honor, if the Court would like to explain the rules on that, **I have tried to say it doesn't start until after sentencing an appeal is filed, but I'm not sure he understands that.** So maybe if the Court could explain to him why the Court cannot do anything – even if the Court thought it could today – that he wants.

[APPELLANT]: My reason for continuing that, what **I'm trying to present is for what was discovered within the time between the trial and for what was not done by my request from counsel.**

[DEFENSE COUNSEL]: Which is a post conviction and appeal

issue, if you could explain that to him? That is fine, so he can understand that a little bit more.

(Emphasis added).

Before the trial court could respond, appellant then asserted that he was relying on Maryland Rule 4-331. The following ensued:

[APPELLANT]:	If you would, Your Honor, if you would please, due to **under Maryland Rule 4-331 it clearly states that under section (a) or section (c) or (f), disposition, that I have the right to produce whatever is newly found evidence before any judgment is imposed upon the one who's found guilty of whatever verdict.**
THE COURT:	Okay, the judgment of whether or not you were guilty or not guilty has already been determined by the jury.
[APPELLANT]:	It says the judgment isn't – well, the verdict has been set, but the judgment isn't until a sentence is imposed upon me. So I have the right to on the record verbally or whatever present it, whatever information I have before as it clearly states right here.
THE COURT:	What rule are you referring to?
[APPELLANT]:	Rule 4-331.
THE COURT:	4-331?
[APPELLANT]:	Yes, sir.
THE COURT:	**Under 4-331 (b), if you're looking for a new trial it says in the Circuit**

	Court on the motion filed within 90 days after an imposition of the sentence. So what [Defense Counsel] is saying to you, advising you is if you believe you're entitled to a new trial, as long as you file that request within 90 days of the sentencing, then that request will be considered.
[APPELLANT]:	Okay, it also states that due to the newly found evidence that it can be – I mean, the motion can be filed, but it could be entered at any time. Under (f), the disposition it says the Court may hold a hearing on any motion filed under this rule –
THE COURT:	**Okay, but the motion has to be filed first. So we're not at the stage yet where the motion is timely. Once we do the sentencing this morning, I will tell you what your appeal rights are. One of your appeal rights is clearly to request a new trial and as long as you request that new trial within 90 days, the Court will consider that request.**
[APPELLANT]:	Okay.
THE COURT:	Okay? All right, then let's proceed. Madam State.[1]

(Emphasis added).

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.*

[1] At this point, the case proceeded to disposition.

Wainwright, 372 U.S. 335, 342-43 (1963); *Walker v. State*, 391 Md. 233, 245 (2006). "If the defendant cannot afford private representation, then he or she is entitled to an effective defense from a public defender or court appointed attorney." *Gonzales v. State*, 408 Md. 515, 529-30 (2009); *see also Dykes v. State*, 444 Md. 642, 648 (2015) (stating that "the defendant has a right to counsel appointed at government expense" (citing *Gideon*, *supra*)). "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 (emphasis added).

As part of the implementation and protection of the fundamental right to counsel, the Court of Appeals adopted Rule 4-215, which "'provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of the Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation.'" *Broadwater v. State*, 401 Md. 175, 180-81 (2007) (quoting *Wright v. State*, 48 Md. App. 185, 191 (1981)). When applicable, Rule 4-215(e) demands strict compliance, and a trial court's departure from them constitutes reversible error. *State v. Hardy*, 415 Md. 612, 621 (2010).

The Court of Appeals has clearly held, however, that Rule 4-215 (e) does not apply to a discharge of counsel after the trial has commenced. *See State v. Brown*, 342 Md. 404, 428 (1996). In *Brown*, the Court stated:

> [O]nce meaningful trial proceedings have begun, the right to substitute counsel and the right to defend pro se are curtailed to prevent undue interference with the administration of justice. Thus, once trial begins, exercise of those rights is subject to the trial court's discretion. Rule 4-215 is designed to ensure that courts comply with constitutional requirements in advising defendants of the Sixth Amendment right to counsel. The Rule is not intended to deprive

> the courts of discretion regarding motions to discharge counsel after trial has commenced. We therefore conclude that the Rule is inapposite once trial is underway.

Id. at 412 (internal citation omitted). Thus, where Rule 4-215 is inapplicable, the decision whether to allow a discharge of counsel is entirely within the discretion of the trial court. *See State v. Hardy*, 415 Md. at 628 ("If the court provides this opportunity, how to address the request is left almost entirely to the court's 'sound discretion.'"). The Court further explained:

> When a defendant makes a request to discharge counsel at a time when Rule 4-215(e) does not apply strictly, "[t]he court must conduct an inquiry to assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption" and rule on the request exercising broad discretion. *Brown*, 342 Md. at 428. 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. *See* [*State v. Campbell*, 385 Md. 616, 635 (2003)] (stating that "the trial judge was not required to make any further inquiry" after the defendant made clear his reasons for wanting to dismiss his counsel); *Brown*, 342 Md. at 430 (describing court's burden as duty to "*provide an opportunity* for [the defendant] to explain his [or her] desire to discharge counsel" (emphasis added)).

Id.

Appellant contends that the trial court abused its discretion at the March 18, 2016 sentencing hearing because it did not honor his request to discharge counsel. Appellant suggests that a request to discharge counsel was implied, citing: (1) his statement at the February 11, 2016 hearing that he wanted to "hire this private attorney"; (2) his statement following the court's inquiry at the March 18, 2016 hearing whether he wanted to discharge counsel that "I don't have any other choice now"; and (3) his statement "what I'm trying

to present is for what was discovered within the time between the trial and for what was not done by my request from counsel." Assuming, *arguendo*, that such statements satisfied a "request" to discharge counsel, *see Gambrill v. State*, 437 Md. 292 (2014), it is clear that the request came well after trial commenced. Thus the abuse of discretion standard of review applies.

Based on our review of the record, we are not persuaded that the trial court abused its discretion. Contrary to appellant's representations on appeal, the court did ask appellant whether he was "saying that [he didn't] want to be represented by [Defense Counsel] during sentencing?" Appellant did not answer that question in the affirmative.

Further, it is reasonable to conclude that appellant was more interested in either litigating a post-trial motion, such as a motion for new trial under Rule 4-331, or obtaining a continuance of the proceeding for the purpose of litigating that motion. The plain language of Rule 4-331[2] indicates that, with the exception of a claim based on DNA

[2] Rule 4-331 provides, in relevant part:

> **(a) Within Ten Days of Verdict.** On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.
>
> **(b) Revisory power.** (1) Generally. The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial.
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> * * *
>
> (B) in the circuit courts, on motion filed within 90 days after its imposition of sentence.
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> * * *

(continued…)

identification (subsection (c)(2)), the rule applies to a motion for a new trial filed after: verdict (subsection (a)); imposition of sentence (subsection (b)) and (subsection (c)(1)(A)); or, after a mandate has been issued by the final appellate court (subsection (c)(1)(B)). Here, appellant did not file a motion within the ten day period after verdict required by subsection (a); indeed, appellant never filed a motion for new trial under Rule 4-331. The sentencing court did not err in concluding that Rule 4-331 did not apply at this point in the proceedings.

We also note that, by the time of appellant's "request" at the March 18 hearing, sentencing had already been postponed three times. The first time was at the request of defense counsel. The second time was because the PSI was not completed. And, the third time was at appellant's express request because, following his hiring of a private investigator, he wanted to hire private counsel. Under the circumstances, we conclude the

[2] (…continued)

> **(c) Newly Discovered Evidence.** The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:
>
> (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief; and
>
> (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, § 8-201 or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

trial court properly exercised its discretion by giving appellant an opportunity to voice his concerns on the new trial issue at the sentencing hearing, and then proceeding to the imposition of sentence.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.