UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 554

September Term, 2016

CLINTON CORDELL

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 22, 2017

A jury in the Circuit Court for Wicomico County convicted Clinton Cordell, the appellant, of first-degree assault, second-degree assault, and false imprisonment of his former girlfriend. The court sentenced the appellant to ten years for assault and a concurrent ten years for false imprisonment.

The appellant presents two questions,[1] which we restate as follows:

I. Did the trial court violate Rule 4-215(e) in determining that the appellant did not have a meritorious reason to discharge his attorney on the scheduled trial date?

II. Is there sufficient evidence of the appellant's intent to inflict serious physical injury to support the conviction for first degree assault?

We find no violation of Rule 4-215(e) and ample evidence to affirm the assault conviction.

FACTS AND PROCEEDINGS

At trial, the State's theory of prosecution was that the appellant trapped Doris Fuentes, his former girlfriend, in his vehicle, threatened to kill her, and intentionally crashed into a tree. Ms. Fuentes, whose nickname is "Sweet Pea," testified that after she

[1] In his brief, the appellant frames the issues as follows:

1. Did the trial court violate Rule 4-215 when it refused to allow Mr. Cordell to discharge his attorney after his attorney admitted that she told Mr. Cordell that she did not want to represent him, after she admitted that she had a conflict of interest, and after she informed the court that it would not be in Mr. Cordell's interest to have her represent him?

2. Was the evidence insufficient to support Mr. Cordell's conviction for first-degree assault?

broke up with the appellant, she moved out of the residence they had shared and changed her cell phone number to prevent him from contacting her.

On August 5, 2015, while at work, Ms. Fuentes received multiple phone calls from the appellant, who continued to call until she threatened to get a restraining order. While still on duty, she received another phone call, from a third party, reporting that "some guys had jumped Clinton and beaten him with a bat[.]" Ms. Fuentes left work and arranged for a friend to drive her past the residence where she used to live with the appellant. She saw that the appellant was injured and got out of the car and spoke with him. Upon seeing him drop a butcher knife, she declined his offer to take her home, prompting him to "start[] screaming" at her. Ms. Fuentes "jumped in" her friend's vehicle, and her friend drove her to her daughter's house, where she had been staying.

While Ms. Fuentes was en route, the appellant called her friend's phone and demanded to talk to her (Ms. Fuentes). The appellant asked her to return. He was crying and accusing her of "put[ting] everything before" him and not being there when he needed her. Ms. Fuentes told the appellant she would not come back because she did not feel safe.

After Ms. Fuentes arrived at her daughter's house, she called the appellant from her own phone so he would not continue to call her friend's phone to speak with her. Ms. Fuentes eventually agreed to let him come to her daughter's house to talk. She feared that if she did not agree, he would break into the home, putting her family members in danger. To protect her family, Ms. Fuentes met the appellant outside. When he told her

to get into his car, she refused. The appellant then threatened: "stop fucking playing with me, Sweet Pea, get in the car before I snap." She got in the car.

As they drove down the street, Ms. Fuentes opened the car door, but the appellant "hit[] the gas" and "shot out into the highway." He continued driving until they reached a Walmart store. He told her that after he got a new phone, he was going to "tak[e] [her] back to [their] house to kill [her] because [she] had snuck away and left him so that meant [she] was sleeping with somebody else and that's what [she] deserved." The appellant was "yelling and cussing" and "biting at [her] face." She jumped out of the car and "took off running[,]" "screaming for help."

The appellant "ran [her] down" in the parking lot, grabbed her by her hair and underneath her breast, dragged her back, and threw her against the vehicle, telling her to "get [her] ass in the car." When she did, he took off "speeding out of the parking lot," reaching speeds over 100 miles per hour, running red lights, and skidding through turns. Ms. Fuentes prayed aloud while the appellant "kept telling [her] to shut up because this is what [she] deserved[.]" He told her "you gonna die tonight, bitch, this is what you need," and if "the cops got behind" his car, she and he would "just be two dead bitches." While traveling down South Division Street, he said: "fuck it, bitch, you gonna die now[.]" Then he "just drove into [a] tree" that was "up like a hill a little bit."

After the crash, Ms. Fuentes jumped out of the car, fell on her knee, got up, and ran, screaming for help. The appellant chased her down one "street over," tackled her, and told her that "he was gonna finish what he started." Another car stopped in the road, and a teenage passenger got out and asked whether they were okay. The appellant

answered that they were "fine," but Ms. Fuentes shook her head no, jumped into the back seat of the stranger's car, and told the driver "to hurry up and take off because he was trying to kill" her. Ms. Fuentes called the police, who arrived quickly. While she was meeting with them, the appellant called her from a neighbor's phone. He said, "baby, we got to stick together on this."

Michelle Collins, the driver of the vehicle in which Ms. Fuentes escaped, testified that she and her teenage son saw someone "speeding and then they stopped real hard." After a quick stop at a convenience store, they saw Ms. Fuentes running and crying, while the appellant was walking. When Ms. Fuentes got into Ms. Collins's car, Ms. Fuentes said, "he's trying to hurt me."

Ms. Fuentes suffered sprains and contusions to her back, leg, and knee. The appellant's vehicle sustained damage to a front fog lamp. The tree had damage to the bark and obvious signs of having been hit.

DISCUSSION

Rule 4-215(e) Challenge

The appellant contends the circuit court violated Rule 4-215(e), governing discharge of counsel, in two respects. First, the judge erroneously failed to "appreciate that Rule 4-215(e) had been triggered." Second, the judge abused her discretion by finding that his "request to discharge counsel was not meritorious." For the reasons explained below, we conclude there was no error or abuse of discretion.

A. Standards Governing Discharge of Counsel

Both the Sixth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights "'guarantee a right to counsel . . . in a criminal case involving incarceration.'" *Broadwater v. State*, 401 Md. 175, 179 (2007) (citation omitted). Rule 4-215 implements this right. It "'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 his Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation.'" *Id*. at 180–81 (quoting *Wright v. State*, 48 Md. App. 185, 191 (1981)).

A request to discharge counsel before trial triggers subsection (e) of Rule 4-215, which provides:

> **(e) Discharge of Counsel—Waiver**. If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

The Court of Appeals has established the following three steps for a court to follow when a defendant seeks to discharge counsel before trial:

> *(1) The defendant explains the reason(s) for discharging counsel*
>
> While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to their perceptions of the reasons and need for discharge of current defense counsel.
>
> *(2) The court determines whether the reason(s) are meritorious*
>
> The rule does not define "meritorious." This Court has equated the term with "good cause." This determination—whether there is "good cause" for discharge of counsel—is "an indispensable part of subsection (e)" and controls what happens in the third step.
>
> *(3) The court advises the defendant and takes other action*
>
> The court may then take certain actions, accompanied by appropriate advice to the defendant, depending on whether it found good cause for discharge of counsel—*i.e.*, a meritorious reason.

Dykes v. State, 444 Md. 642, 652 (2015) (internal citations omitted) (emphasis in original). When "the court finds that there is no meritorious reason for discharge of defense counsel," it must "advise the defendant that the trial will proceed as originally scheduled" and "that the defendant will be unrepresented if the defendant discharges counsel and does not have new counsel[.]" *Id.* at 653.

"In light of the fundamental rights implicated, Md. Rule 4-215(e) provides a 'precise rubric[ ]' with which we demand 'strict compliance.'" *State v. Graves*, 447 Md. 230, 241 (2016) (quoting *Pinkney v. State*, 427 Md. 77, 87 (2012)) (additional citations omitted). Nevertheless, it is not necessary for the court to invoke this subsection of the rule by name, number, or language, as long as the record, viewed as a whole, shows compliance with its requirements. *Cf. Webb v. State*, 144 Md. App. 729, 747 (2002) (finding no error where "[t]he court, after listening to the explanation" for appearing

without counsel, "implicitly found the reason was non-meritorious). On appeal, we evaluate *de novo* whether the trial court complied with Rule 4-215(e), but we review "a trial court's determination that a defendant had no meritorious reason to discharge counsel . . . for an abuse of discretion." *Cousins v. State*, 231 Md. App. 417, 438 (2017) (citations omitted).

B. The Circuit Court's Compliance with Rule 4-215(e)

"[A] request to discharge counsel is 'any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel.'" *Gambrill v. State*, 437 Md. 292, 302 (2014) (quoting *Williams v. State*, 435 Md. 474, 486–87 (2013)) (additional citations omitted). The appellant argues that here the court failed to appreciate that Rule 4-215(e) was triggered by his statements expressing dissatisfaction with his privately retained defense counsel and his desire to proceed with a different private attorney.

The record refutes that argument. It shows that after the appellant twice complained about defense counsel, and asked for a postponement so he could be represented by another private attorney, the trial judge responded by engaging in the three-step Rule 4-215(e) inquiry mandated by the Court of Appeals. We shall excerpt substantial portions of the colloquies among court, counsel, and client, because they establish that the court conducted a commendably thorough inquiry regarding the appellant's complaints, that the court ultimately found no meritorious reason to discharge defense counsel, and that the court then undertook remedial measures that ultimately

resulted in the appellant's decision to proceed to trial with defense counsel's representation.

On March 16, 2016, the scheduled trial date, defense counsel informed the court that during their "preliminary conversations" that morning, the appellant "indicated . . . that he wishe[d] [to] strike [her] appearance." The court pointed out that "the 180-day date" was "less than ten days away[,]"[2] that the appellant had requested a speedy trial, and that defense counsel had taken over for a public defender less than a month after charges were filed. After confirming that the appellant had hired defense counsel, the court initiated a Rule 4-215(e) discharge inquiry:

> **THE COURT: Why is it that you would like her to strike her appearance today?[3]**
>
> THE DEFENDANT: Well, it was, like, I think, we've bumped heads a few times and I just think I should go a different route as far as an attorney. It's nothing derogatory against her or anything, but we've had some disagreements.
>
> **THE COURT: Well, do you have counsel available to represent you today?**

[2] Under Md. Code (2001, 2008 Rep. Vol.), § 6-103(a) of the Criminal Procedure Article ("CP") and Md. Rule 4-271(a), a criminal defendant must be brought to trial within 180 days after the earlier of the defendant's first appearance in circuit court or the appearance of defense counsel, unless the administrative judge finds "good cause" for a postponement. In *State v. Hicks*, 285 Md. 310, 318 (1979), the Court of Appeals held that charges must be dismissed if the State fails to establish good cause for trying the defendant after this 180-day deadline, which has become known as the "*Hicks* date" or *Hicks* Rule. *See State v. Huntley*, 411 Md. 288, 298 (2009); *Peters v. State*, 224 Md. App. 306, 356, *cert. denied*, 445 Md. 127 (2015).

[3] Because our focus is on the circuit court's Rule 4-215(e) inquiry, we have set forth the court's statements in boldface type.

THE DEFENDANT: No, ma'am.

THE COURT: Have you made any effort to contact counsel?

THE DEFENDANT: Yes, ma'am.

THE COURT: Who have you contacted?

THE DEFENDANT: Maloney, Thomas Maloney, I think.

THE COURT: And under what circumstances is he willing to represent you?

THE DEFENDANT: He will. He is.

THE COURT: Okay. He's not communicated with the Court. Did he know today was the trial date?

THE DEFENDANT: Actually he did.

THE COURT: Why is he not here?

THE DEFENDANT: Because he had a prior engagement.

THE COURT: Well, are your witnesses that were summonsed to appear prepared to proceed?

[PROSECUTOR]: They are, Your Honor. They are present.

THE COURT: Do you have a position on the – so what I'm hearing is that you want a postponement. It's not a question that [you] just want to discharge your counsel, you would certainly be able to represent yourself or you could have the representation of your current counsel, you're not in a posture to have substitute counsel enter their appearance on your behalf today nor has anyone offered through the Court system to substitute their appearance on behalf of [Defense Counsel]. So you would be requiring a postponement. Is that right?

THE DEFENDANT: Yes.

THE COURT: If I were not inclined to postpone the case, how would you like to proceed?

THE DEFENDANT: I have no clue. I really don't.

THE COURT: [Defense Counsel], have you done everything that you've been asked to do in this case?

[DEFENSE COUNSEL]: I have, Your Honor.

THE COURT: So, I don't know that [the appellant] is familiar with how these things work so let me just kind of outline it.

[Defense Counsel] appeared on behalf of the [appellant] for a motions hearing. There was a joint motion for a postponement of both the motions hearing and the trial date, which was granted at the request of the defense. Right?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: So that was on December 4, 2015. And that was granted for good cause.

So, thereafter, having satisfied herself of any discovery matters, all constitutional issues, and so forth, she concluded that there was no need for the motions hearing.

Is that something that is a problem for you, sir?

THE DEFENDANT: She said it wasn't, she said she waived motions because everything was done, she didn't see any problem with it, so I went along with it.

THE COURT: So that's not the subject of your concern, right?

THE DEFENDANT: No.

THE COURT: Is there something that she didn't do for you that you asked her to do in this case?

THE DEFENDANT: No, I just asked her how would she go about defending my case, defending my case. And I didn't really get an answer. I mean, she is saying it depended on how somebody testified, and I said, and my, excuse me, I'm a little nervous –

THE COURT: Take your time, sir. I understand that you are nervous.

THE DEFENDANT: All right. She said that it depended on how the witness testified. Really I didn't agree with that because you had the statement of facts, she's going to say the statement, what she says happened, but if there's discrepancies in that statement then it shouldn't matter. And that was our disagreement, that was our disagreement.

THE COURT: [Defense Counsel], tell me about your background in the law and law-enforcement and your experience with handling criminal matters.

[DEFENSE COUNSEL]: Yes, Your Honor. In 1996 I entered the Maryland State Police Academy. I completed the Academy, became a Maryland State Trooper, was a Maryland State Trooper until 2008 achieving the rank of Sergeant.

During that time, while I was a Maryland State Trooper I participated in several investigations to include murder investigations, wiretap investigations, in fact I was the affiant and responsible person for the first wiretap that ever occurred in Queen Anne's County, Maryland.

Subsequent to that I went to law school in 2008, retired from the Maryland State Police due to health concerns, and was a prosecutor in Worcester County for approximately four years. During that time I prosecuted or assisted in prosecuting murder cases, as well as drug cases and all the way down to speeding tickets in District Court.

Subsequent to that, I resigned from the Worcester County State's Attorney's Office and became defense counsel in 2012, operating under my own shingle, and have done so since then. I have been counsel in all different kinds of, as defense counsel I've been counsel in, again, everything from speeding tickets to murder trials.

And I've been successful in several of those endeavors.

THE COURT: You would agree that the credibility of the witness is largely contingent upon what they say on the witness stand?

[DEFENSE COUNSEL]: I would, Your Honor.

THE COURT: So I understand.

> **[Appellant], have you been to law school? . . .**
>
> THE DEFENDANT: No.
>
> **THE COURT: Have you received specialized legal training of any kind?**
>
> THE DEFENDANT: No.
>
> **THE COURT: All right. So I am not convinced that there is a meritorious reason for you to discharge your counsel. And given the fact that we have all the witnesses here and this would be the second counsel, a second trial date, I am not persuaded that there's good cause to postpone the case. And I will say that, in Wicomico County I've been designated as the administrative judge designee for purposes of postponements, so it is I who would be making this decision . . . .**
>
> **So, I'm finding there is an absence of good cause.**
>
> **Is there anything that you feel that I should address, Counsel, that I have not?**
>
> [PROSECUTOR]: No, Your Honor. Other than, if we are proceeding to trial today, I would just simply like to put the plea offer that was extended on the record, Your Honor.
>
> **THE COURT: Why don't you do that now? I will set this matter aside to allow [the appellant] to speak with his counsel. We have a jury ready, willing, and able to give you your full jury trial rights, so all of your rights have been preserved. . . .**

(Emphasis added.)

After the prosecutor put the plea offer on the record, the court announced that it would "set this aside" to "take up some other matters," during which "the two of you may consult, meaning [the appellant] and [Defense Counsel]." Following a recess, the court confirmed that all the witnesses were present then again recessed while awaiting a jury

panel. Court did not reconvene until the afternoon, when a jury panel was finally available.

At that point, defense counsel advised the court that the appellant still was seeking to discharge her, prompting the following colloquy during which the court determined that disagreements over "trial dynamics" and resulting animosity between the appellant and defense counsel did not constitute meritorious reasons for discharging counsel:

> [DEFENSE COUNSEL]: Your Honor, my client and I have had several discussions, as a part of those discussions he indicated that he wanted to speak to you I believe about my representation.
>
> **THE COURT: Are we prepared to go to a trial today?**
>
> THE DEFENDANT: *You just said that you didn't want to represent me, and for that I would try to find somebody else.* You just said that you didn't want to represent me out there.
>
> [DEFENSE COUNSEL]: I have a duty to the Court, I have a duty to [the appellant], I have no problem pursuing that duty. My client indicated a number of things, there were a number of accusations that were thrown at me out in the hallway with regards to my cheating him, with regards to the money, regarding his payment of my fees, with regards to my ethical duty. He indicates that I am not going to represent him to my fullest abilities and throw him under the bus as a result of our differences. He believes a number of different things.
>
> **THE COURT: Well, they're his beliefs and not yours, Counsel.**
>
> **Go ahead, sir, what is it that you want to express to me?**
>
> THE DEFENDANT: It's that when I ask a question she takes offense to it. I'm not trying to discredit her by any means. I'm not. But, you know, it's my freedom, you know, that is at stake. And when I ask a question, I never, I mean, she gets irritated and upset. And I just, I mean… I try to, I'm –
>
> **THE COURT: You're trying to understand.**

THE DEFENDANT: I'm trying to understand, but at the same time I don't want, I feel as though she really don't want to be –

You just told me that you didn't want to represent me flat out.

THE COURT: Well, sir, is there some ethical question that you've raised, you raised an ethical question about her representation?

THE DEFENDANT: I asked, when I asked about how are you going to go about defending my case, and that's where, and she says I've told you over and over again, this, that and the third.

But what you, *you really haven't given me nothing as far as defending my case.*

THE COURT: Okay. Well, at this point it sounds to me like the earlier conversations we have were that this is – correct me if I'm wrong, because you are the prosecutor, not me.

[PROSECUTOR]: Yes, ma'am.

THE COURT: This is a case where one person who is going to testify for the State, Ms. Fuentes, I believe her name is, and she's going to allege that the Defendant tried to hurt her seriously with a car, or circumstances to that effect.

[PROSECUTOR]: Correct.

THE COURT: Is there any video of the events?

[PROSECUTOR]: No. No, Your Honor.

THE COURT: Is there any independent corroboration of anybody's – or of the events?

[PROSECUTOR]: There are two independent State's witnesses. One of which will testify about facts surrounding the actual car crash, and then the other witness who spoke with [the appellant] after the incident, before and after the incident.

THE COURT: Okay.

[PROSECUTOR]: Then two police officers, Your Honor. There is no technical evidence, other than that the State would attempt to

introduce photographs of the scene, which would include the vehicle, the damage that the vehicle caused when it hit a tree . . . .

[DEFENSE COUNSEL]: And if I might, if I might, I've had several discussions prior to today's date where I have gone over with [the appellant] exactly how I would go about questioning the State's witnesses and how I would go about cross-examining and the issues with regards to the various statements that she has. I have gone over them, not once, not twice, but at least three different times. And I find that no matter how many times I go over them, I still get the same questions on a, and I just, I'm, I'm at wit's end.

THE COURT: So, what is it that you have asked her to do?

THE DEFENDANT: No, I just asked simply how would you go about defending me, I explained –

THE COURT: What is it that you would have her do that she's not doing?

THE DEFENDANT: Explain to me, explaining.

And you have not explained much of anything.

THE COURT: Okay. But you haven't asked her to do something that she hasn't done?

THE DEFENDANT: Excuse me?

THE COURT: Other than that, she hasn't failed to do anything that you've asked of her.

THE DEFENDANT: No, it's just's [sic] that she's not explaining to me how she's going to defend my case. And that's really important to me.

THE COURT: Okay. Well, I understand that. But there's, you know, trial is a dynamic event.

THE DEFENDANT: I understand.

THE COURT: And unless – and you would have an opportunity to testify if you wished. You also have the right to remain silent. And if you chose to remain silent, the jury would

not be permitted to infer that you were guilty by virtue of your silence. But beyond that, trial strategy has to be left in the sound discretion of defense counsel because she has the legal training to deal with it as it unfolds. So she's not going to be able to tell you how the trial is going to exactly unfold, because no one has a crystal ball.

THE DEFENDANT: Right. I know that. I was just asking [her] how was she prepared for it, I know, I know that there's, you know, I know that.

THE COURT: Okay.

THE DEFENDANT: But she gets offended, and she just cussed me out out there so …

[DEFENSE COUNSEL]: I did not.

THE DEFENDANT: You just cussed me out.

[DEFENSE COUNSEL]: I did not use any foul language in this building whatsoever, sir. That is, that's –

Your Honor, at this point I can't, I can't, I don't –

THE DEFENDANT: And you know –

[DEFENSE COUNSEL]: – I don't think I can proceed with these kinds of accusations, I mean, this is . . .

THE DEFENDANT: You didn't just use profanity out there?

[DEFENSE COUNSEL]: No, I did not.

THE COURT: Well, actually, frankly, what we have is, we have probably I'm guessing sixty jurors waiting to give you a trial. I have yet to hear a single thing that your counsel has not done for you. Nor have I heard any good reason for us to change course at 12:40 in the afternoon.

This morning when we met in chambers Counsel was fully prepared. The State and defense reviewed the voir dire, the jury instructions, and so forth with me. I had no sense that there was any problem with her understanding of the case. She

is very experienced. And at some point there is only so much explanation that can be given.

THE DEFENDANT: I understand that but . . .

THE COURT: So it's true that there may be some angst here. We've been waiting since nine o'clock and it's now 20 of one. But I am not persuaded that she can't represent you. Whatever accusations that are unfounded are being made are – this is not the time to parcel them out.

[DEFENSE COUNSEL]: I know.

THE COURT: And I'm not persuaded that there is a meritorious reason to postpone the trial so that you can try to now, after having – you're privately retained?

[DEFENSE COUNSEL]: I'm private.

THE COURT: After having privately retained her, after having had the benefit of the Public Defender and electing for private counsel, having waited until the day of trial to try to at this moment bring these issues to the forefront, I don't believe that it is meritorious to postpone the case for the reasons I'm hearing.

It is trial strategy, it is her trial strategy to handle the witnesses, and there is only so much advance explanation that you can get, sir.

So, to the extent that this is an effort to discharge your counsel – is that what you're asking to do? You may represent yourself if you wish, is that your desire?

THE DEFENDANT: I'm not really, I don't have any experience in doing that.

THE COURT: So you don't want to represent yourself?

THE DEFENDANT: I just want to be represented correctly.

THE COURT: I understand that.

THE DEFENDANT: That's it.

THE COURT: But if you're given the choice between representing yourself or being represented by Ms. [Defense Counsel], are you electing to retain her services?

THE DEFENDANT: I'll retain her, but I want to make it, on the record, that she didn't want to, she just said that she didn't want to represent me.

THE COURT: Okay. I understand there is a dispute between –

THE DEFENDANT: And I want that known, I want it known on the record.

THE COURT: She's disputing that.

Is that right?

[DEFENSE COUNSEL]: Yes. I indicated to him that after all of the accusations that he's made to me, against me, that I did not want to represent him, that is correct. I will not . . .

THE DEFENDANT: So, she don't –

THE COURT: You're not denying that.

[DEFENSE COUNSEL]: No, I'm not.

THE COURT: Are you prepared to go forward today?

[DEFENSE COUNSEL]: I am prepared to go forward.

THE COURT: Do you believe that you have a conflict of interest at this juncture?

[DEFENSE COUNSEL]: I believe I do. I believe I do because, I mean, I have – as I've indicated to the Court, I'm just at wit's end as to how to, I don't believe that I can, I believe that it's against his interest at this particular point in time because –

THE DEFENDANT: I just ask to get a lawyer, that's all I want. That's all I want.

THE COURT: Well, so, if you –

[DEFENSE COUNSEL]: Because I don't believe we're going to be able to work together during the trial, that's the problem that I have, and that's the angst that I have. I'm prepared to go to trial. I think that there is a, I think that ethically I can stand up there, I could represent him, I think that I could, you know, do a good job. But I think that, basically, us being able to work together during the trial and for the purpose of, purposes of his defense, it's not going to happen.

THE COURT: Well, haven't you been preparing for all of that up until today?

[DEFENSE COUNSEL]: Yes, ma'am.

THE COURT: Has anything changed between yesterday and today?

[DEFENSE COUNSEL]: The accusations that he's made ethically against my . . . yes.

THE DEFENDANT: And I wasn't trying to like down you or anything, I was just concerned and you took it –

THE COURT: But you've never asked her to do anything that she's failed to do; is that right? . . . .

THE DEFENDANT: I asked her to, she –

THE COURT: Other than to talk to you further about it.

THE DEFENDANT: Yes, I have.

THE COURT: What?

THE DEFENDANT: Oh, no, I've asked her, when I, when I do that I get, well, I'm not going to talk about this right now, don't call me on a Sunday, this, that and the third, you know, it's, I don't – I'm not trying to down you, like I said –

THE COURT: All right. I'll tell you what I'm going to do. I'm going to invite the jurors to have lunch. You may step back.

(Counsel and Defendant returned to trial tables and the following occurred in open court:)

THE COURT: Ladies and gentlemen, we understand that you have been here all morning, and rather than try to get underway I'm going to invite you to have a one-hour luncheon recess. . . .

(Jurors leaving the courtroom.) . . .

THE COURT: All right. So, the jurors have been excused for a luncheon recess so we can take our time and being a little bit more relaxed so we're not doing it at the bench.

So, we have an hour and, of course, you're all entitled to a luncheon recess too so I will try to give you that opportunity.

Mr. State's Attorney, you've heard everything that's transpired at the bench. What is it that you would like to say?

[PROSECUTOR]: Your Honor, it does give the State concern. Having heard [Defense Counsel] express that she felt that there is now a conflict going forward, obviously the State wants to be in a position to preserve . . . the trial. . . . [I]t does give the State great concern that she did cite that she feels there might be a conflict going forward. I do think, if that is the case, if he is convicted today, it could create issues down the road.

I have no issue at this time, if the Court is inclined to, . . . I will defer solely on the Court to that, if [Defense Counsel] is excused, if he wants to seek additional representation, I will not oppose a postponement request in the interest of justice just given what I've heard.

But, Your Honor, I will defer to the Court as to whether I think it's appropriate or not. . . .

THE COURT: Well, it sounds to me like what happened was counsel is prepared to go and that the [appellant] has questioned her into a state of frustration.

[PROSECUTOR]: Correct, and I would agree with that entirely.

THE COURT: In which case I don't really think that there is a meritorious reason to postpone the case. . . .

Because she was competent and prepared this morning, nothing has changed by way of the issues to be faced, the defenses that can be lodged, the evidence that's going to be presented. It's just a question of how frustrated the two of them are with one another. And, of course, it appears to me that, you know . . .

[PROSECUTOR]: And certainly, Your Honor, if . . . it's any help to the Court, I have had the opportunity to discuss this case with [Defense Counsel] on multiple occasions, through e-mail, through telephone, we've discussed many facets of the facts, any potential legal issues, so the State is not disputing in any way her preparedness to try the case. We have discussed it at length. We have discussed stipulations, which evidence is going to be objected to, so . . . the State has no doubt that . . . from a trial standpoint that the case couldn't be tried fairly today.

THE COURT: Okay.

[PROSECUTOR]: Again, it was just a concern about the conflict.

THE COURT: Well, ultimately no one wants to go to trial. So this case was initiated on August 6, 2015 with a statement of charges. . . .

And it has been pending since that time. I have yet to hear that there was something that is deficient about counsel's performance other than that she's been frustrated today after . . . she was fully prepared to go to trial, after we all reported for a trial by jury, and all of the State's witnesses were assembled, and in response to the [appellant's] decision to make multiple inquiries, and, you know, I'm not sure that we're required to like each other, we're required to be competent lawyers fully prepared for trial and having considered all of our client's materials.

So under the circumstances, I'm not inclined to postpone the trial so that he can now examine his options for a third attorney on the day of trial. If that were the case, there were many opportunities to contrive an excuse for postponement and nothing that I've heard today changes my impression that the appellant would like to have this matter postponed for his own benefit. And I'm not going to postpone the trial, and I'm not going to strike counsel's appearance. I'm going to give the

> **two of you over lunch to discuss anything that you feel that needs to be discussed, and we will go forward to trial. And I believe that will give everyone the opportunity to eat something and maybe cooler tempers will prevail.**

(Emphasis added.)

After the luncheon recess, defense counsel returned with the appellant. Trial proceeded without further mention of the appellant's previous requests to discharge counsel.

To support his argument that the court failed to appreciate that Rule 4-215(e) was triggered by his complaints about defense counsel, the appellant selectively cherry-picks passages from this transcript. As the fully excerpted colloquies show, however, the trial court satisfied the procedural and substantive requirements of Rule 4-215(e) in a commendably thorough and patient manner. *Cf. State v. Westray*, 444 Md. 672, 687 (2015) ("[T]he Circuit Court was painstaking in its effort to ensure that Westray's effort to discharge counsel was truly his own decision and that he was aware of the consequences of that decision.").

Specifically, the court satisfied step one of the Rule 4-215(e) inquiry by giving the appellant ample opportunity, over the course of thirty transcript pages, to explain why he wanted to discharge his privately retained defense counsel. The court completed the second step when it expressly found that neither the appellant's complaint about defense counsel's failure to explain how she planned to defend him nor the frustration expressed by both the appellant and defense counsel regarding their relationship constituted a meritorious reason to discharge defense counsel minutes before voir dire was scheduled

to begin. The third and final requirement was fulfilled by the court's advisements that trial would not be postponed even though the appellant's proposed substitute counsel was unavailable, so that if the appellant elected to discharge his current defense counsel without a meritorious reason, then he would have to proceed to trial *pro se* that day.

Based on this record, we are satisfied that the court recognized that the discharge of counsel rule was triggered, then conducted the mandatory Rule 4-215(e) inquiry, by applying the "meritorious reason" standard to determine that the appellant did not have grounds for his eleventh-hour attempt to discharge defense counsel. Rule 4-215(e) does not require more than this. *See, e.g.*, *State v. Taylor*, 431 Md. 615, 642 (2013) (Rule 4-215(e) requires only that the trial court "listen, recognize that he or she must exercise discretion in determining whether the defendant's explained reasons are meritorious, and make a rational decision."); *Pinkney* 427 Md. at 89–90 ("The plain and unambiguous language of the Rule does not require the trial judge to inform a defendant of the option to proceed *pro se* when the judge determines that the defendant's reasons for requesting discharge of counsel are not meritorious, the judge subsequently denies the defendant's request, and the defendant has not made a statement sufficient to indicate to the trial court a desire to invoke the right to self-representation.").

C. Lack of Meritorious Reason for Discharge

As discussed, the appellant's reasons for discharging defense counsel were that she had failed to explain how she was going to defend him, which in turn precipitated animosity between counsel and client. We are not persuaded that the trial court abused

its discretion by ruling that neither the "failure to explain" nor the animosity concern was a meritorious reason to discharge counsel.

"To constitute an abuse of discretion, the decision 'has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Cousins*, 231 Md. App. at 438 (citation omitted). Because a court is "under no obligation . . . to credit" a defendant's complaints regarding his attorney's performance, the court may properly exercise its discretion to decide that a demand for discharge "was unmeritorious" based on its determination of "what to accept as true, and what to discount as false." *Id*. at 444–45.

Responding to the appellant's complaint that defense counsel was "not explaining to me how she's going to defend my case," the trial judge ascertained that this related to how defense counsel planned to handle the State's witnesses, including the victim, Ms. Fuentes. The court ruled that this was not a meritorious reason to discharge an experienced attorney who "was fully prepared" to try the case that day, explaining that questioning witnesses is a matter of trial strategy, that "trial is a dynamic event," and that "there is only so much explanation that can be given" because counsel does not have "a crystal ball." Because the appellant had no other complaint about defense counsel's representation, the court concluded there was nothing "deficient about counsel's performance" and that the appellant's complaint was a pretext for avoiding trial. The court did not abuse its discretion in determining that the appellant's "failure to explain" complaint, whether genuine or pretextual, did not constitute good cause to discharge defense counsel. *See generally State v. Campbell*, 385 Md. 616, 635 (2005) ("requests to

discharge [counsel] should not be used as 'eleventh hour' tactics to delay the trial"); *Cousins*, 231 Md. App. at 443 ("A disagreement regarding legal strategy is not . . . a meritorious reason to discharge counsel.").

With respect to the acrimony acknowledged by both the appellant and defense counsel, the court found that counsel was understandably frustrated by the appellant's persistent questioning, given that trial strategy in examining witnesses falls within the discretion of attorneys and that counsel had attempted, without success on multiple occasions, to explain that to the appellant. Because this conflict resulted from the appellant's unreasonable demands regarding trial strategy, it warranted a substitution of counsel only if the appellant and defense counsel were "so at odds as to prevent presentation of an adequate defense.'" *Cousins*, 231 Md. App. at 443 (citations omitted).

The court determined that the animosity between client and counsel did not preclude an effective defense. When the appellant complained that defense counsel had said she did not want to represent him, and defense counsel raised concerns about their ability to communicate during trial, the trial court conducted remedial inquiries. Despite defense counsel's admitted frustration, she affirmed her "duty to [the appellant]" and assured the court that she had "no problem pursuing that duty." Later, when defense counsel became exasperated by the appellant's "accusations," she characterized the resulting animosity as a "conflict of interest," but then explained that she only meant that she had "angst" about whether she and the appellant were "going to be able to work together during the trial[.]" In her very next sentence, however, counsel assured the court that she was "prepared to go to trial" and that she "could represent" the appellant and "do

a good job." Counsel further confirmed that she and the appellant had been able to prepare for trial and that she was ready to proceed with trial that day.

We are not persuaded that this record demonstrates "a complete breakdown in the attorney client relationship." To the contrary, in our view, the record supports the court's determination that "what happened was counsel is prepared to go and that the [appellant] has questioned her into a state of frustration" and that "[i]t's just a question of how frustrated the two of them are with one another." Based on what she observed, the trial judge concluded that counsel and client might still be able to communicate well enough to proceed, then gave them an opportunity to defuse their differences over the luncheon recess. When court reconvened, the appellant made no further complaints or requests to discharge counsel. Only after affording counsel and client the opportunity to resolve their conflict did the court proceed with jury selection.

This was an appropriate exercise of judicial discretion. Because defense counsel overcame her concern about being able to communicate with the appellant, and thereafter assured the court that she was ready for trial and could provide an effective defense, the court did not abuse its discretion in finding that the conflict did not constitute good cause for discharging counsel. *See Cousins*, 231 Md. App. at 442–43. The court then undertook remedial efforts that were apparently effective, both in resolving the appellant's misunderstanding of "trial dynamics" relating to counsel's ability to predict and explain what would happen at trial, and in reducing frustrations related to the appellant's complaints. Indeed, the appellant does not point to anything in the trial record

from which we could discern that the previous conflict continued in a manner that actually impaired defense counsel's representation.

Based on this record, the court did not abuse its discretion in determining that the appellant lacked a meritorious reason to discharge defense counsel or in denying the appellant's "eleventh hour" request for a postponement so that he could secure substitute counsel.

II. Sufficiency Challenge to First-Degree Assault Conviction

The appellant challenges whether the evidence is sufficient to support his conviction for assault in the first degree. He argues that the jury could not reasonably infer that he intended to inflict serious physical injury. We disagree.

When considering a sufficiency challenge to a criminal conviction, we determine whether, when the evidence presented at trial is considered 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.'" *Jones v. State*, 440 Md. 450, 455 (2014) (emphasis in original) (citation omitted). In doing so, we defer to the jury's evaluations of witness credibility, its resolution of evidentiary conflicts, and its discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *See State v. Manion*, 442 Md. 419, 431 (2015).

Although assault is now a statutory crime, it still encompasses "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." Md. Code (2002, 2012 Repl. Vol.), § 3-201(b) of the Criminal Law Article ("CR"). This Court has distinguished among three different modalities of assault: "(1)

intent to frighten, (2) attempted battery, and (3) battery." *Snyder v. State*, 210 Md. App. 370, 382 (2013).

Whereas an assault, without more, is an assault in the second degree, *see* CR § 3-203(b), an assault in the first degree is an assault committed either "with a firearm" or with the specific intent to cause "serious physical injury to another." CR § 3-202(a)(1)-(2). In cases like this, where there was no firearm, first-degree assault is essentially a second-degree assault committed with the specific intent to inflict serious physical injury. *See Snyder*, 210 Md. App. at 385-86. "Serious physical injury" is any physical harm that "creates a substantial risk of death" or "causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." CR § 3-201(d).

Accordingly, "[t]he intent to frighten variety [of first degree assault] requires," among other things, "that the defendant commit an act with the intent to place another in fear of immediate physical harm" that rises to the level of a serious physical injury, "and the defendant had the apparent ability, at that time, to bring about the physical harm." *Snyder*, 210 Md. App. at 382. To establish the attempted battery and battery forms of first-degree assault, the State must prove the defendant "intended to cause" death or serious physical injury. *See Maryland Criminal Pattern Jury Instruction* (MPJI-Cr.) 4:01.1 (2d ed. 2013); *Snyder*, 210 Md. App. at 386.

The appellant tacitly concedes that the evidence was sufficient to establish all three modalities of assault but argues that it fell short of establishing the specific intent necessary to elevate the assault from second-degree to first-degree. He asserts that "the

crash was not a high impact event from which one could infer an intent to inflict serious bodily injury[,]" given that Ms. Fuentes "walked away from the accident" and the damage to the vehicle was slight. This argument ignores that "a jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers" a serious physical injury. *See Chilcoat v. State*, 155 Md. App. 394, 403 (2004) (citations omitted).

There is ample evidence to support such an inference. Ms. Fuentes testified that the appellant told her he would kill her because she "deserved" to die after leaving him. When she tried to escape, the appellant became enraged, violently grabbed her, dragged her back to the car, ran red lights, drove at high speeds, and again told her he was going to kill her. He then said, "fuck it bitch, you gonna die now," and "just drove into the tree." Ms. Fuentes's account of the crash was corroborated by photos of the tree and the car, as well as by the testimony of Ms. Collins, who described Ms. Fuentes' fear of the appellant. According to Ms. Fuentes, when she was able to flee after the crash, the appellant again ran her down and pledged to "finish what he started."

From this evidence, reasonable jurors could infer that the appellant intended to kill Ms. Fuentes or to inflict a serious physical injury resulting in significant impairment upon her, even if he was not successful in doing so. Alternatively, reasonable jurors could find that the appellant had a specific intent to frighten Ms. Fuentes with serious physical injury, by threatening to kill her. Either of those inferences of specific intent is sufficient to sustain the first-degree assault conviction. *Cf. Ford v. State*, 330 Md. 682, 705 n.9 (1993) (issue for jury is not whether serious injury was inflicted but whether it was

intended); *Chilcoat*, 155 Md. App. at 403 ("the jury may infer that one intends the natural and probable consequences of his act") (citations and internal quotation marks omitted).

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.