Circuit Court for Baltimore City
Case No. 115135019

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1895

September Term, 2016

MATTHEW SLICHER

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Alpert, Paul E.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: October 30, 2017

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

On the morning of the first day of trial before a jury in the Circuit Court for Baltimore City, Matthew Slicher ("Appellant") indicated that he wished to discharge his court-appointed counsel. In accordance with Md. Rule 4-215(e), the trial court allowed Appellant to explain the reasons for his request, and found that his reasons to discharge were not meritorious. The trial court informed Appellant that if he discharged his counsel, his trial would proceed as scheduled, and he would be representing himself. Appellant chose to proceed unrepresented by counsel.

When trial began, Appellant informed the court that he wished to call his father as a witness to testify to his mental health issues and his good character. The court sustained the State's objection to this testimony, as neither Appellant's mental health nor his character were at issue.

The jury convicted Appellant of attempted first-degree murder, theft of less than $1,000, and wearing and carrying a dangerous weapon, and the court sentenced him to life imprisonment with all but forty years suspended. Appellant presents two questions for our review:

1. "Did the lower court err in ruling that [Appellant] had no meritorious reason to discharge his attorney, and, thus, no choice but to proceed with that attorney's representation or go to trial *pro se*?"

2. "Did the lower court err in refusing to allow [Appellant] to call his father as a witness?"

For the reasons that follow, we shall affirm.

BACKGROUND

A. Underlying Crime and Arrest[1]

On April 21, 2015, at around 2:30pm, Appellant entered National Fleet Leasing and Car Rental ("National Fleet"), located at 4533 Falls Road in Baltimore City, where employee Diana Reydman was eating lunch alone at her desk. Appellant entered her office with a T-shirt wrapped around his head and walked around her desk to where she was sitting. When Appellant reached Ms. Reydman's chair, he asked her, "[d]o you remember me[?]" to which she responded, "[y]es, I do." Appellant had recently rented a car from National Fleet and had returned once before to extend the contract on the vehicle. However, the car that he had rented was subsequently totaled in a car accident.[2] After a brief dialogue, Appellant abruptly unzipped his shirt, brandished a large butcher knife and began stabbing Ms. Reydman. During the attack, Ms. Reydman was stabbed 12 times. Appellant grabbed Ms. Reydman's cell phone during the affray. These events were captured on National Fleet's surveillance system.

During the altercation, Ms. Reydman managed to escape from the building, catching the attention of Benjamin Balakhani, the owner of a business situated next to National Fleet, as well as Robert Milligan, one of Mr. Balakhani's employees. Mr. Balakhani was outside his office getting some fresh air when he noticed Ms. Reydman bleeding profusely

[1] The facts here recounted were elicited during Appellant's jury held on August 8-12 and 15, 2016.

[2] According to the Statement of Probable Cause, Ms. Reydman told a police officer at the hospital that Appellant also demanded that she "give [him] the money" before he began stabbing her.

and "yelling for help." Ms. Reydman showed Mr. Balakhani that she had been stabbed, and then Mr. Balakhani observed "a man . . . [with] a black and white checkered – some sort of [] shirt . . . wrapped around the head" exit National Fleet wielding "a big old kitchen knife." Mr. Milligan asked Ms. Reydman if the man walking with the knife was the assailant, to which she responded, "[y]eah, that's him, right there." Mr. Milligan pursued Appellant across the parking lot and caught the attention of an EMT crew waiting for food outside of a restaurant.

Ronnie Sines, who was part of that EMT crew, observed Mr. Milligan run passed the restaurant yelling "[w]here did he go? Where did he go?" Mr. Sines asked him what was going on, and he responded that "[s]ome guy just beat the crap out of the lady; he ran down this way." Mr. Milligan informed Mr. Sines that the assailant was wearing blue jeans and was "kind of on the short side." Mr. Sines immediately began searching the area for someone who matched that description. During the search, a man parked in front of a 7-Eleven rolled down his window and informed Mr. Sines that he had heard yelling and then witnessed a man run past his vehicle and around the corner of the convenience store. Mr. Sines cautiously peered around the corner of the building and saw Appellant crouched in the corner of the parking lot behind the 7-Eleven. Mr. Sines observed that Appellant "had blood all over his pants and on his shirt." When Mr. Sines asked Appellant what was going on, Appellant yelled "Why are you following me?" and took off running. Mr. Sines pursued Appellant on foot. After a short chase, Mr. Sines managed to subdue Appellant and waited for police officers to arrive. Appellant was arrested without incident. The knife

used in the stabbing was recovered shortly thereafter, and Ms. Reydman's cell phone was found in the back parking lot of the 7-Eleven.

B. Appellant's Dismissal of Appointed Counsel

On May 12, 2016, Appellant appeared with his attorney from the Office of the Public Defender. Unfortunately, Appellant's attorney failed to put the case on his calendar and arrived late. Appellant and his attorney submitted a Not Criminally Responsible (NCR) plea. Appellant's counsel also informed the court that Appellant had been evaluated in Mental Health Court and found competent and responsible, and that subsequently he had been evaluated by a defense expert, but that that expert report was not yet completed. The Court ordered the trial to be postponed, and on May 13, counsel appeared before the same judge and it was agreed trial would be specially set for August 8, 2016.

The week before trial, defense counsel's home had been burglarized, and his briefcase, which contained the files for Appellant's case, was stolen. On the morning of August 8, 2016—the day that Appellant's trial was scheduled to commence—the State's Attorney explained to the court that the parties were before the court on defense counsel's request for a postponement. As Mr. Reid started to address the court on this point, Appellant interrupted, stating, "I would like to dismiss Mr. Reid. He's no longer my lawyer." In substance, Appellant stated that his court-appointed attorney had not shown him his paperwork and that he was not satisfied with his efforts. The court requested a response from Appellant's attorney, and subsequently found that Appellant's reasons for discharging his attorney were not meritorious. The court warned Appellant that if he discharged his attorney and did not have alternate counsel, he would proceed to trial

unrepresented. Appellant indicated that he understood and wished to represent himself. After being satisfied that Appellant clearly understood the consequences of his choice to discharge his attorney, the court found that Appellant knowingly and voluntarily waived his right to counsel and wished to proceed without representation. In his own capacity, Appellant withdrew his NCR plea. The court retired for the day to allow Appellant to retrieve his clothing and to have the State's discovery documents provided to him.

C. Trial

On August 9th, Appellant announced that he intended to call his father, William Slicher, as his sole witness. Appellant indicated that although his father was on vacation at the time the crime was committed, he would testify as to his medical history. On the third day of trial, after the State had rested, Appellant called his father to testify, and the State objected. The State argued that because his father was traveling at the time the incident occurred, he had no opportunity to make any direct, factual observations of Appellant's behavior, and therefore, his testimony was not relevant. Additionally, the State averred that if his father had been able to observe his mental health and behavior at the time of the incident, evidence regarding his state of mind was not relevant to the case because Appellant had withdrawn his NCR plea. In response, Appellant proffered that his father would testify to both his mental health history and his reputation for good character, as demonstrated by Appellant's ownership of a company that rehabilitates prison inmates. The trial court ruled that Appellant's father had nothing relevant to add on the issue of guilt or innocence and precluded him from testifying.

At the conclusion of the trial, the jury convicted Appellant of attempted first degree murder, theft under $1,000, and wearing or carrying a dangerous weapon with the intent to injure. On October 18, 2016, the trial court sentenced Appellant to life in prison, suspending all but 40 years for attempted first degree murder; 18 months for theft to run concurrent to the attempted first degree murder count; and, three years for possession of a deadly weapon with intent to injury to run concurrent to the first degree murder count. This timely appeal followed. Additional facts will be provided as necessary.

DISCUSSION

I.

Discharge of Counsel

At the outset of our discussion, we examine the exchange between the trial court and Appellant immediately after he requested to discharge his counsel:

> THE COURT: . . . So, Mr. Slicher, so my understanding is you said you want to discharge or fire your attorney?
>
> [APPELLANT]: Yes, sir.
>
> THE COURT: Okay. [W]hat I need to hear from you is, you have to give me – I have to find that there is a meritorious – a good reason for doing that. If you will let me know what that is and I will rule on that.
>
> [APPELLANT]: I have asked him plenty of times for my motion of discovery. He has not come forward with no kind of discovery.
>
> * * *
>
> [APPELLANT]: No kind of motions, whatsoever. He keeps on pushing off everything else to the next person and has done nothing. He has not shown me nothing to go forward on my case. . . .
>
> * * *

> THE COURT: Okay. And, I'm sorry, but you've got to give me – you're just – again, what's the reason why you want to discharge [defense counsel]?
>
> [APPELLANT]: He has not shown me no kind of motions. I asked him after my arraignment, I asked him for my motions.
>
> THE COURT: What do you mean, motions? Do you mean like things he's filed in court, asking that things be kept out or things of that nature?
>
> [APPELLANT]: I mean my motions of discovery, to know what kind of evidence they got against me.
>
> * * *
>
> [APPELLANT]: He has – he hasn't shown me that I can't – I can't fight no fair trial. I can't have a fair trial with him, because he's not going to put no effort for it – for my case.
>
> THE COURT: Well, how do you know that, sir? I'm sorry?
>
> [APPELLANT]: All he's done is push everything to everyone else; trying to get an NCR plea, trying to do all this other stuff, push it to the next person; and he has not shown me no effort, whatsoever. He hasn't shown me no paperwork; no nothing.

The trial court asked defense counsel to respond:

> [DEFENSE COUNSEL]: Your Honor, I have . . . attempted to provide the materials that Mr. Slicher has requested; meaning all the documents that he has mentioned on – on multiple occasions.
>
> The first time, I don't believe that he wanted them, because of the sensitive nature of the documents; that it was something that I didn't – he pretty much made sure that he – I didn't give them to him.
>
> And, the last time that I tried to give them to him, I was unfortunately relieved of those materials several hours before my meeting with Mr. Slicher; and that was the incident from last week that I described to the Court.
>
> I have filed for competency. I have filed for NCR. I've had him evaluated by two separate experts. I've gone through an extensive file review with both the State's Attorney and the detective.
>
> [B]ut for my, you know, ability to not have my material stolen from me, [] I don't know . . . what else I could have done.

THE COURT: All right. Anything else, Mr. Slicher?

[APPELLANT]: No.

THE COURT: All right. I find that there is no meritorious reason for your request.

Now, Mr. Slicher, I can permit – I will not permit that your counsel be fired; I – but, before I would even permit that, I have to inform you that the trial will proceed as scheduled, with you representing yourself –

[APPELLANT]: That's fine.

THE COURT: – if you fire counsel and you don't have new counsel.

[APPELLANT]: That's fine, your honor.

THE COURT: Okay.

[APPELLANT]: I understand that.

THE COURT: So you want to represent yourself; is that correct?

[APPELLANT]: Correct.

The trial court explained to the parties that he needed to review Appellant's file and then bring the parties bring the parties back later that day so that ensure Appellant was fully informed of his rights under Maryland Rule 4-215. When the proceedings resumed, the court examined Appellant as to whether he was able to understand the proceedings, and then gave Appellant a copy of the charging document and explained each charge as well as the consequences of not having representation at trial. After an extensive advisement, the trial court reiterated its advice and the following occurred:

THE COURT: And, again, you understand – I went over this a little bit a few second ago; but do you understand your right to trial includes the right to call witnesses on your behalf; the right to confront and cross examine the

State's witnesses; the right to obtain witnesses by compulsory process by summons; the right to require proof of the charges beyond a reasonable doubt? Do you understand all those rights, sir?

[APPELLANT]: Yes, sir.

THE COURT: Do you understand that an attorney would do those things for you and protect your rights?

[APPELLANT]: Yes, sir.

THE COURT: Most importantly, sir, do you understand, you're not going to be able to complain if you are convicted, and you made a mistake in representing yourself? Do you understand that, sir?

[APPELLANT]: Yes, sir.

THE COURT: Now, do you still wish to proceed ahead and discharge counsel and represent yourself?

[APPELLANT]: Yes, sir.

THE COURT: All right. And, I will find that you are knowingly and voluntarily waiving your right to counsel.

The law regarding the appointment of representation for indigent defendants is found in Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment. *Broadwater v. State*, 401 Md. 175, 179 (2007) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). The Sixth Amendment provides that the right to counsel is guaranteed, "'including appointed counsel for an indigent, in a criminal case involving incarceration.'" An indigent defendant may waive the right to assistance of counsel and choose to represent himself or herself. *Williams v. State,* 321 Md. 266, 270 (1990); *see also Faretta v. California*, 422 U.S. 806, 819-20 (1975) ("The Sixth Amendment does not provide merely

that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.”). As unwise as it may be, a defendant’s decision to opt for self-representation during the course of his or her trial may not be infringed upon. *See Dykes v. State*, 444 Md. 642, 650 (2015). However, “[c]ourts will indulge every reasonable presumption against a defendant’s waiver of appointed counsel.” *Cousins v. State*, 231 Md. App. 417, 436 (2017).

While an indigent defendant is entitled to competent appointed counsel, that right does not guarantee “‘that a defendant will inexorably be represented by the lawyer whom he prefers.’” *Dykes*, 444 Md. at 648 (quoting *Alexis v. State*, 437 Md. 457, 475 (2014)) (additional citations omitted). *See also* Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article (“CP”), § 16-101 *et seq.* (The OPD may provide representation with its own staff, or through private paneled attorneys using public funds. In either case, however, an indigent defendant is not entitled to a specific attorney of his or her choosing.); *State v. Campbell*, 385 Md. 616, 627-25 (2005) (interpreting the Maryland Public Defender statute). To implement these constitutional guarantees, the Court of Appeals adopted Maryland Rule 4-215.

When a defendant seeks to discharge his or her counsel, Maryland Rule 4-215(e) is triggered and “incorporates safeguards to ensure that the defendant is acting knowingly and voluntarily in making that choice.” *Dykes*, 444 Md. at 651. The rule 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.

"When applicable, Rule 4-215(e) demands strict compliance." *State v. Hardy*, 415 Md. 612, 621 (2010). "'The provisions of the rule are mandatory [,]' and a trial court's departure from them constitutes reversible error." *Id.* (quoting *Williams*, 321 Md. at 272). Rule 4-215(e) does not define the word "meritorious." However, Maryland appellate courts have equated "meritorious" to be synonymous with "good cause." *See Dykes*, 444 Md. at 652 (citations omitted); *see also Cousins*, 231 Md. App. at 437.

In determining whether the trial court complied with Rule 4-215(e), Maryland appellate courts review the issue *de novo*. *State v. Graves*, 447 Md. 230, 240 (2017). "However, a trial court's determination that a defendant had no meritorious reason to discharge counsel under Maryland Rule 4-215(e) is reviewed for an abuse of discretion." *Cousins*, 231 Md. App. at 438. In Appellant's brief, he challenges the trial court's decision that his reasons to discharge his attorney were not meritorious, *not* that it failed to comply with the statutory language of Rule 4-215(e). Accordingly, we review this issue for abuse of discretion.

"Abuse 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. *Weathers v. State*, 231 Md. App. 112, 131-32 (2016) (quoting *Nash v.*

State, 439 Md. 53, 67 (2014)) (additional citations and internal quotations omitted). A decision examined under the abuse of discretion standard is not in error simply because a reviewing court would have arrived at a different conclusion. *See id.* at 132. Rather, the trial court decision "has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Cousins*, 231 Md. App. at 438 (quoting *Evans v. State*, 396 Md. 256, 277 (2006).

Appellant argues the court erred in ruling that his reasons for discharging his attorney were not meritorious, leaving him no choice but to proceed with that attorney's representation or proceed to trial pro se. He offers two reasons why his request to discharge of counsel was, in fact, meritorious. First, Appellant argues that his public defender failed to prepare for trial because he had "done nothing" and shown him "no paperwork" related to his case, and did not place the date of trial on his calendar. Second, Appellant avers that in the totality of the circumstances, between his attorney's inaction in his case and his failure to prepare for trial, an irreconcilable conflict had arisen which created a breakdown of the relationship and "an understandable and palpable distrust" of his attorney.

In response, the State asserts that none of the reasons Appellant states in his brief for discharging his counsel were meritorious as defense counsel attempted to show Appellant the documents concerning his case but was rejected by Appellant himself, and had done extensive work on Appellant's case before being discharged. Moreover, the State argues that Appellant's complaint was not that he distrusted his attorney, but that he was dissatisfied with his attorney's efforts. We agree with the State, and hold that none of the reasons Appellant cites for dismissal of his attorney were meritorious.

A. Failure to Prepare

In *Alford v. State*, 202 Md. App. 582 (2011), this Court addressed whether a defendant's perception that his attorney had not sufficiently prepared for trial and was thus incompetent was a meritorious reason to discharge counsel. In that case, the defendant proffered several reasons why his advisement to the trial court presented a sufficiently meritorious reason to discharge his attorney including: failure to investigate or call three witnesses that he had identified; failure to communicate with him before trial; failure to file motions that the defendant requested; and a strained attorney-client relationship. *Id.* at 607. In affirming the decision that the defendant's request to discharge was unmeritorious, we held that the trial court correctly concluded that:

> (1) defense counsel was credible when she stated that appellant had not provided defense counsel with the names of individuals who had actually witnessed the incident to interview; (2) defense counsel was credible when she stated that she reasonably responded to appellant's requests for communication, as she responded to all three written requests and visited appellant twice before trial; (3) defense counsel filed reasonable motions and acted reasonably in an effort to defend appellant; [and] (4) tension existed between counsel and appellant, but the tension was not so unusual to rise to the level of interfering with the defense in appellant's case[.]

Id. at 609. *See also*, *Fowlkes v. State*, 311 Md. 586, 607 (1988) (holding that defendant's claims that his attorneys had not vigorously investigated "the true facts" of his case and that all of his witnesses did not appear – as the defendant had provided an incorrect address for one – were not meritorious reasons to discharge counsel).

Here, Appellant's attorney appeared in court and explained that he "did not have this on my calendar, . . . but, obviously, this is a case I've spent a lot of time working on." The attorney explained that he had a mental health evaluation performed in Mental Health

Court, had Appellant evaluated by a defense expert, had "done file review" with the State, and intended to continue with the NCR plea. However, Appellant's attorney admitted that he was not "100 percent ready to go forward today because, honestly, Your Honor, I did not realize that it was this morning." Appellant's attorney requested a postponement and a specially set date, to which the State agreed. Then, on the morning of trial, Appellant informed the court that he wished to discharge his attorney because he believed that his attorney had "done nothing" to prepare for trial and had shown "no effort, whatsoever" in pursuing his case.

The trial judge responded that he had spoken briefly with defense counsel, and but for his house being burglarized, he would have been prepared to proceed to trial. Additionally, the trial judge found that defense counsel was credible when he stated that he visited Appellant several times in jail, had acted in Appellant's best interest by having him evaluated by several psychological experts, and had thoroughly reviewed the document file with both the State's Attorney and the detective. The record reveals that the trial court considered Appellant's reasons, but given his counsel's credible explanations, found Appellant's reasons to be unmeritorious. *See Alford*, 202 Md. App. at 609. We perceive no abuse of discretion.

B. Breakdown of the Relationship

This Court explained recently that "[a] complete breakdown in communication is considered 'good cause' to discharge counsel." *Cousins*, 231 Md. App. at 439. "In determining whether a court abused its discretion in denying a request to discharge counsel because of a breakdown of communication," two relevant considerations are "'whether

appellant and his or her counsel experienced a total lack of communication preventing an adequate defense[,]'" and "'[w]hether the defendant substantially and unreasonably contributed to the communication breakdown.'" *Id.* (citations omitted).

In *Dykes v. State*, 444 Md. 642 (2015), the Court of Appeals discussed the level of mistrust and irreconcilable conflict between attorney and client required to constitute good cause. In that case, the defendant appeared in roughly ten different pre-trial hearings in front of 6 different judges. 444 Md. at 655. Each time the defendant appeared, he expressed an interest in discharging his court-appointed public defender because of a growing distrust between him and his attorney, distrust of the OPD in general, and a general desire to obtain a different lawyer. *Id.* At no point during this nearly two-and-a-half-year saga, however, did the defendant express in interest in proceeding without representation by a lawyer. *Id.* at 655-665.

During one of the defendant's early pre-trial hearings, it came to light that one of his assigned OPD attorneys "could not find DNA evidence that the State should have provided in discovery, and she did not know whether the State had failed to provide it, or she had lost it during a recent move." *Id.* at 657. From this point on, the defendant's belief that the entire public defender's office was conspiring against him, and that "the OPD altered paperwork to make him look guilty." *Id.* at 658. During a subsequent hearing to discharge his attorney, the defendant stated that he wanted to fire his public defender was because he felt that the office was "manipulating evidence," not being "truthful with the court," in addition to his belief that there was "a conspiracy between the Public Defender's

Office and the State's Attorney's Office." *Id.* at 661. The defendant remained adamant that he wanted *someone* to represent him, however, just not the OPD. *Id.*

In the defendant's final hearing to discharge counsel, the defendant expressed concerns about a "lack of communications between himself and defense counsel" as his reasoning for discharging his current attorney. *Id.* at 662. The lower court found

> that there is a **palpable and obvious distrust** that the Defendant has with respect to the Office of the Public Defender and specific attorneys that have been assigned to him to date. . . . And I find that that is clearly a meritorious reason for the Defendant's request.

Id. at 663 (emphasis added). However, even though the court found his reason for discharge to be meritorious, it did not stay the proceedings to allow him to obtain alternate representation and required him to represent himself at trial. *Id.* at 663-64. The Court of Appeals, in finding that this was in error, stated:

> This was not a case in which the defendant attempted to manipulate the court on the eve of trial by asserting his right to counsel or withdrawing a waiver of counsel on the eve of trial. . . .
>
> The bottom line was that the court found that Mr. Dykes had a meritorious reason to discharge counsel almost six weeks before the trial date. Mr. Dykes made repeated, unequivocal statements at that hearing that he wanted an attorney and later reiterated that desire to other judges of the court both in writing and in person.

Id. at 667-68.

Here, the State argues that Appellant did not express to the court that he distrusted his attorney. Instead, Appellant stated repeatedly that he was not satisfied with his efforts. We agree. Appellant failed to express a continuing breakdown of the attorney-client relationship during the representation, an insurmountable conflict, or any reason that he

should distrust his appointed assistant public defender. Rather, he informed the trial court the morning of trial that his attorney had not done enough for him. Moreover, Appellant sought to discharge appointed counsel without articulating any interest in securing substitute counsel, and then knowingly and voluntarily waived his right to counsel in favor of self-representation.

Appellant alleged that his counsel's alleged failure to provide him with his "motions of discovery, to know what kind of evidence they got against me" created a "breakdown in attorney-client communication." To the extent that he alleges there was a breakdown in communications with his counsel, we cannot discern error in the court's determination that it was not sufficient to warrant discharge of counsel. *See Cousins*, 231 Md. App. at 439-40.

After Appellant's initial request to discharge his attorney, the trial court afforded his counsel the opportunity to respond. Counsel reported that he had "attempted to provide the materials that" Appellant requested "on multiple occasions." During his first attempted to deliver the documents to Appellant, defense counsel believed that Appellant did not want them "because of the sensitive nature of the documents[.] . . . [H]e pretty much made sure that" defense counsel did not "give them to him." The last time defense counsel attempted show the discovery materials to Appellant, his house was burglarized and he was "relieved of those materials several hours before" his meeting with Appellant.

Based on this, we conclude that the alleged level of distrust between Appellant and his attorney does not amount to a "complete breakdown in communication" that we consider to be "good cause" to dismiss counsel. *Cousins*, 231 Md. App. at 439. Having

reviewed the record before us closely, we hold that the trial court fully examined Appellant's reasons for seeking to discharge counsel and did not abuse its discretion in ruling that those reasons were not meritorious.

II.

Exclusion of Appellant's Father's Testimony

On the third day of trial, Appellant attempted to call his father, William Slicher, to testify about his mental health around the time that the crime was committed and his ownership of a clothing company that helps rehabilitate ex-felons into the working world. The State objected to the calling of the father:

> [THE STATE]: Your Honor, I object to the Defense calling William Slicher, Sr., William Slicher as a witness for a couple things.
>
> One is, Mr. Slicher had previously proffered that his father [] was not a fact witness; was not a witness to any of the events. And, in fact, I think – believe he said that [] his father[] was out of town on the date of the event.
>
> He said – Mr. Slicher said that he intended to call his father to testify – have him testify about his medical history. Uh, I will proffer that I am aware that . . . the Defendant [] has a mental health history; and I think, possibly, a drug history, also.
>
> I object to the father testifying about any of those issues; because, number one, NCR is not in play in this case. [T]he father, did not apparently have any – make any observations of [] the Defendant[] on or near the time of these events that would have an impact on any of the elements of the State's case; meaning his state of mind or any of those sorts of issues would be relevant [sic].
>
> Diminished capacity is not a recognized [d]efense in Maryland. There's been no – if intoxication is the point of the Defense, the father would not be able to testify on that matter, because, again, according to [] the Defendant, his father was out of town and was not present at or near the time of these events.

Furthermore, it's my understanding that [] the father[] is not a psychiatrist, is not a mental professional; so he would, at best, [] be able to offer a lay opinion.

But, again, because of the circumstances of the prior proffer by [] the Defendant, I believe that none of those observations would be relevant or admissible in this case for the reasons that [] the Defendant[] has offered – has proffered that he would be calling his father.

THE COURT: All right. Well, Mr. Slicher, you told me at the beginning of the case that you were going to call your father for – for general background or medical issues –

DEFENDANT: Uh-huh. Well –

THE COURT: – (continuing) and that he did not know anything about this particular incident that day.

DEFENDANT: No. He was away. He was out of town. You know the pill bottle that they found was an anxiety medicine called Xanax. So, that's what I'd like to bring out about my Xanax/anxiety history.

THE COURT: But – but, that deals with your –

DEFENDANT: I'm bipolar.

THE COURT: Okay, so, you would have him testify to the past diagnoses that you've received?

DEFENDANT: Yes.

THE COURT: But, mental illness – because there's no plea of not criminally responsible in this case; mental illness is not relevant in the case because Maryland [l]aw does not recognize that the intent of any of these – specific intent crimes would be mitigated by mental illness, unless it's a full, not criminally responsible plea.

In short, general testimony about a mental illness – without being offered by a psychiatrist or a psychologist who's qualified to testify to it, and without doing it through the NCR process would – would not be permitted in this case.

DEFENDANT: So, he can't testify to what type of job I have – I was doing?

THE COURT: What type of job you were doing?

DEFENDANT: Yeah.

THE COURT: Well, that would be, presumably, some form of character evidence.

DEFENDANT: Character evidence? We can't testify about that?

THE COURT: Well, I don't know how that would relate to these charges.

DEFENDANT: It relates to these charges if I get found guilty. My company – I own a clothing company that rehabilitates prison inmates.

THE COURT: Okay; but that's a little bit different, because, if you were found guilty, then we'd go into sentencing; and that's a very different setting, where lots of things aren't relative to guilt or innocence become relevant to something.

* * *

THE COURT: Okay, so if it – is there anything else other than any mental health diagnosis or the medication that you would be proposing to elicit from your father if he testified?

DEFENDANT: He was away in home town, so I can't really use him for anything about the crime.

THE COURT: All right. Well, then, I conclude that he doesn't have anything relevant to add on the issue of guilt an innocence.

DEFENDANT: Okay.

THE COURT: And therefore, that, there's no purpose to call your father, William Slicher, as a witness.

So I will sustain the State's objection and preclude him from being . . . called in the case.

Appellant argues that the trial court erred in precluding his father from testifying, and thereby violated his right to present a fair defense. In this regard, he asserts that his

father "could have offered relevant testimony about his [] character, his mental health, and how his mental health may have affected his ability to form the intent necessary to commit some of the charged crimes."

The State responds that the trial court properly exercised its discretion when, based on Appellant's proffer, it ruled that Appellant's father was not an expert witness – nor was he present at or around the day of the crime to observe his behavior – and therefore could not testify to his mental illness. Additionally, the State argues that the trial court properly excluded testimony as to Appellant's good behavior because it was irrelevant to the crime charged.

We agree with the State, and hold that the trial court did not err in excluding Appellant's father from testifying.

In *Taneja v. State*, 231 Md. App. 1 (2016), this Court delineated the standard of review to be used when reviewing issues related to admissibility of evidence at trial:

> A trial court is given wide latitude in controlling the admissibility of evidence. We review the trial court's decision under an abuse of discretion standard. Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law. If the trial court's ruling is reasonable, even if we believe it could have gone the other way, we will not disturb the ruling on appeal.

Id. at 11-12 (citations and quotations omitted).

In Maryland, the right of a criminal defendant to present his own witnesses is guaranteed under the Compulsory Process Clause of the Sixth Amendment, the Due Process Clause of the Fourteenth Amendment, and by Article 21 of the Maryland

Declaration of Rights. *See id.* at 10; *Redditt v. State*, 337 Md. 621, 634 (1995). As the Supreme Court in *Washington v. Texas*, 388 U.S. 14 (1967) explained:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witness for the purpose of challenging their testimony, he has the right to present his own witness to establish a defense. This right is a fundamental element of due process of law.

Id. at 19. That right, as integral as it may be to our notion of due process and fundamental fairness, is not absolute, and is curtailed by Maryland's rules of evidence. *See Teneja*, 231 Md. App. at 10. *See also Taylor v. Illinois*, 484 U.S. 400, 410 (1988) ("[T]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence. The Compulsory Process Clause provides him with an effective weapon, but it is a weapon that cannot be used irresponsibly.").

When evaluating evidentiary issues, the first inquiry a trial court must answer is whether the evidence is relevant. "Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. *See also*, *Snyder v. State*, 361 Md. 580, 591 (2000) ("Relevance is a relational concept. Accordingly, an item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case.") Once a trial court determines whether the proposed evidence is relevant under Md. Rule 5-401, the court must determine whether admission of the evidence is consistent with "constitutions, statutes," the rules of evidence, or "decision law[.]" Md. Rule 5-402. However, a court

has absolutely no discretion to admit evidence that is irrelevant. *Smith v. State*, 218 Md. App. 689, 704 (2014) (citing Rule 5–402; *State v. Simms,* 420 Md. 705, 724 (2011)).

Appellant contends that his father's testimony regarding his history of mental illness was relevant to the question of whether he was capable of forming specific intent, and therefore admissible, irrespective of whether he was pursuing a not criminally responsible defense. In support of his argument, Appellant relies heavily on *Hoey v. State,* 311 Md. 473 (1988), in which the Court of Appeals held that "a defendant's specific intent to commit a crime is different from a defendant's lack of criminal responsibility." *Id.* at 494. The Court continued, that "where a particular mental element of a crime must be proved to establish commission of a crime, evidence that it did not exist, whether due to mental impairment or some other reason relevant to that issue, is admissible." *Id.* at 495. Appellant also cites *Simmons v. State*, 313 Md. 33 (1988) for the limited purpose of showing that a criminal defendant may "present evidence of his impaired mental condition for the limited purpose of showing the absence of *mens rea*." *Id.* at 39, n. 3.

Appellant's reliance on *Hoey* and *Simmons* is misplaced, as both cases involve the admissibility of *expert* psychiatric witness testimony. *See generally*, *Hoey*, 311 Md. at 494-95 (holding that introduction of expert psychiatric testimony to show that defendant was NCR at time of crime was proper); *Simmons*, 313 Md. at 39-40 (holding that exclusion of expert psychiatric testimony in murder case to show that defendant acted under a subjective, but mistaken, belief that self-defense was necessary was in error). Neither case is relevant here, as Appellant sought to introduce lay-witness opinion testimony regarding his history of mental illness and its effect on his ability to form the requisite *mens rea* to

commit the crimes for which he was charged.[3] Appellant did not state at trial, nor does he allege on appeal, that he intended to elicit expert witness testimony from his father.

Maryland Rule 5-701, which governs the scope and admissibility of lay testimony, provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

In addition to the explicit limitations on lay witness testimony contained in Rule 5-701, "Maryland courts have adopted the narrow approach that 'lay witnesses may testify regarding their direct perceptions of events but that opinions or inferences that rely on scientific, technical, or specialized knowledge must be excluded unless the witness is qualified as an expert.'" *Randall v. State*, 223 Md. App. 519, 578 (2015) (quoting *Ragland v. State*, 385 Md. 706, 725 (2005)). Lay witnesses may offer opinion testimony "if the

[3] Appellant testified on his own behalf, detailing his mental health, drug addiction issues, and general lack of memory of committing the alleged stabbing. Appellant testified that on the day in question, he remembered picking up his Methadone prescription (for his heroin addiction) as well as his Xanax prescription (for his anxiety). At some point in the day, however, Appellant testified that he combined the Methadone and Xanax in order to sleep, and suffered from a prolonged "black out." Appellant testified that he did not "believe [he] ever made it into" National Fleet and only recalled being in the parking lot "behind the 7-11. I wanted to roll up a joint." According to Appellant, he saw Mr. Sines "peeking around the corner[,]" but did not know why he was being observed. When Appellant heard the sirens of police vehicles responding to his location, he panicked and "start[ed] booking . . . and the next thing [he] knew, . . . [he] w[o]ke up in Central Booking." Apparently, Appellant sought to elicit similar testimony from his father as to how his anxiety and other mental illnesses affected his memory and ability to form an intent to commit a crime. The court did not err, however, in ruling that because Appellant abandoned his NCR plea, this testimony, as well as other testimony concerning his mental illnesses, were not relevant to the issue of guilt in Appellant's trial.

opinion is rationally based on the perception of the witness and helpful to the determination of the trier of fact." *Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 438 (2000).

Moreover, our recent decision in *Shiflett v. State*, 229 Md. App. 645 (2016) is instructive regarding the admissibility of evidence related to a defendant's general mental health profile and diagnoses. In that case, we concluded that the trial court did not err in excluding testimony of the defendant's expert witness as to his general "psychological profile" because the testimony did not "bear a 'rational nexus to the issues of premeditation and intent.'" *Id.* at 679 (quoting *Hartless v. State*, 327 Md. 558, 577 (1992)). We continued to explain:

> Whether that rational nexus exists, and whether there is a sufficient factual basis to support the expert's testimony, is a matter committed to the sound discretion of the trial court, and a court's action in admitting or excluding such testimony seldom constitutes grounds for reversal. Because psychiatrists are no more clairvoyant than any other witness, and lack the ability to reconstruct the emotions of a person at a specific time, they ordinarily are not competent to express an opinion as to the belief or intent a person harbored at a particular time. A trial court *may* allow an expert to testify (as long as the testimony meets the requirements of Md. Rule 5-702) about a defendant's psychological profile if that testimony allows the jury to infer that the defendant was suffering from the symptoms of that psychiatric disorder **on the day in question**. . . . [T]here must be a direct connection between the fact and symptoms of the asserted mental illness and the specific mental state at issue – **experts cannot simply identify an illness or symptom and opine generally on what the defendant might or might not have been able to do at the time.**

Id. at 679-80 (citations and quotations omitted) (bold emphasis added). Applying the standard of *Shiflett* to the present case, it is clear that Appellant's father, who was neither certified as an expert in the field of psychiatry nor able to observe Appellant around the

period that the crime occurred, could not identify Appellant's mental issues and generally opine on what effect they may have had on him at the time the crime occurred.

Still, Appellant cites *State v. Conn*, 286 Md. 406 (1979) to support his contention that his father's testimony was relevant to show that his history of mental illness affected his ability to form specific intent. In *Conn*, a police officer observed the behavior of a boy minutes after the commission of a brutal homicide and noted that the defendant was "sitting there with his face into a towel and was crying. . . . He was somewhat griefstricken. He seemed to be fit of mind. There wasn't any situation where he seemed to be suffering from any kind of illness. It seemed to be primarily grief." *Id.* at 408-09. The Court of Appeals ruled that the testimony was not a conclusion as to the defendant's mental health. *Id.* at 428-29. However, the Court did formulate a two-prong rule for admitting lay-witness testimony concerning mental health:

> [T]he statement by the lay non-expert witness becomes trustworthy and thus admissible only after he demonstrates a sufficient foundation for the inference drawn. . . . The non-expert is testifying upon the basis of his observations of the accused over a sufficient period of time. We regard it as of material assistance to the jury to have the benefit of those lay observations **together with his conclusion as to whether as to the time of the event in question** the accused seemed to deviate or not to deviate from the established norms.

Id. at 428. (Emphasis supplied). But the lay-witness rule concerning mental health testimony does not help Appellant because that rule requires that the witness must have had 1) a prolonged, continuous exposure to the person in question with a meaningful opportunity to observe his or her behavior and 2) **the ability to observe that person's behavior during a period close in time to the event in question**. *Id.*; *see also Watts v.*

State, 99 Md. 30 (1904).[4] Although Appellant's father may have had an opportunity to observe his behavior over a long period of time, Appellant conceded that his father was out of town at the time of the incident. Therefore, he had no opportunity to directly observe Appellant's contemporaneous behavior or form an opinion regarding whether it deviated from established norms. We hold that the court did not abuse its discretion in excluding Appellant's father's testimony regarding his mental health issues.

Finally, we conclude that Appellant's argument that his father's testimony regarding his reputation for good character should have been admitted is equally unavailing. Evidence of a defendant's peaceable character is relevant where a crime of violence is at issue. *Pierce v. State,* 62 Md. App. 453, 460-62 (1985) (holding that excluding testimony concerning defendant's peacefulness when the crime charged was manslaughter was in error). However, the issue is whether Appellant's father's testimony would have concerned peaceable character. Appellant made no proffer as to whether his father's testimony about his business would shed light on Appellant's nature as someone unlikely to commit an assault. *See Braxton v. State*, 11 Md. App. 435, 440 (1971) ("To be relevant, it is necessary that the character be confined to an attribute or trait the existence or nonexistence of which would be involved in the noncommission or commission of the particular crime charged. . . . His reputation among his business associates or his place of business or employment is generally inadmissible."). We cannot say the trial court erred in its determination that the

[4] *State v. Conn* centered around an in-depth examination of the so-called "Watts Rule" and its effect on lay-witness conclusions regarding the mental health of a defendant. 286 Md. at 424-28.

testimony proffered regarding Appellant's ownership of a business that rehabilitates criminals was not relevant to whether he was more or less likely to have committed a crime of violence.

Accordingly, we find that the trial court's decision to exclude Appellant's father's testimony addressing his mental health and good character as a business owner was not an abuse of discretion.

JUDGEMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.