

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2116

September Term, 2019

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LEO DONNELL SHAW

v.

STATE OF MARYLAND

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Graeff,  
Friedman,  
Kenney, James A., III  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Friedman, J.

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Filed: July 19, 2021

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

Appellant Leo Shaw was convicted by a jury of two counts of possession of a firearm by a prohibited person, one count of possession of a rifle/shotgun by a prohibited person, and one count of illegal possession of ammunition. He was sentenced to incarceration for a total of fifteen years. On appeal, Shaw argues that the circuit court violated Maryland Rule 4-215 by failing to determine whether he had meritorious reasons for requesting to discharge his appointed counsel, and that the evidence was insufficient to sustain his convictions. For the reasons that follow, we conclude that the evidence was sufficient to sustain Shaw’s convictions, but because the circuit court failed to follow Rule 4-215(e), Shaw’s convictions must be reversed, and the case remanded for further proceedings.

### **FACTS**

At 5:30 a.m. on May 24, 2019, officers of the Salisbury Police Department executed a search warrant on a residence belonging to Carmenita Shaw, Leo Shaw’s sister. When officers entered the house, they encountered Leo Shaw, dressed only in underwear, as he exited a bedroom on the first floor with his hands in the air. Shaw was the only person in the house at the time.

At trial, evidence established that the bedroom that Shaw exited primarily belonged to Carmenita’s ex-boyfriend Adrian Thompson, but whenever Thompson was not at the house, Shaw would sleep in Thompson’s room. Inside the bedroom police found three firearms, a large amount of ammunition, two digital scales, and small plastic bags indicative of street level drug-dealing. Two of the firearms were visible upon entering the

bedroom—the rifle was standing up inside the closet and one of the handguns was sitting on the nightstand next to the bed. The second handgun was found inside a lunchbox on the closet floor. All three guns were loaded, and additional ammunition was found under the bed. At trial, in addition to the guns and ammunition, the State introduced into evidence photographs of the scene showing personal items, papers, and mail belonging to Shaw that were found in the room.

## DISCUSSION

Shaw raises two issues for our review: *first*, that the circuit court failed to follow the requirements set out by Rule 4-215(e) after he wrote letters to the court stating that he wanted to discharge his appointed attorney, and *second*, that the evidence was insufficient to support his convictions. We address both issues in turn.

### I. REQUEST TO DISCHARGE COUNSEL

Prior to trial, Shaw sent two letters to the circuit court complaining about his appointed attorney. The first letter was dated October 22, 2019, and read in relevant part:

To whom this may concern,

Now comes Defendant, Leo Shaw, represented Proper, in the above captioned action – Ineffective Assistance of Counsel (Tamika Fultz Esq.) (i) improper pressure on defendant to plead guilty (ii) Erroneous legal [advice] resulting in loss of an absolute defense (iii) Failure to challenge veracity of a search warrant (iv) Failure to seek disqualification of the Judge at motion hearing (v) Lack of devotion to the interests of the accused.

The letter was postmarked October 23, 2019. There was a notation on the letter, dated October 29, 2019, that the matter was set for a hearing. The second letter, dated October 24, 2019, read:

To whom this may concern,

I, Leo D. Shaw would no longer like to be represented by Tamika Fultz, Esq. on the above case number. I truly believe that I am not being fairly represented by Ms. Fultz and have already filed a motion for ineffective assistance of counsel with the courts on this issue.

I am requesting the opportunity for immediate better representation moving forward. Also I am requesting that the trial date set for the above case number not be changed. Thank you for your time.

The circuit court held a hearing on November 7, 2019:

COURT: All right. So the record reflects that Mr. Shaw is pending trial on nine counts. Firearm possession with a felony conviction, firearm possession with a felony conviction, rifle shotgun possession with a felony conviction, CDS possession of firearms, CDS possession of firearms, CDS possession of firearms, regulated firearm, stolen/sell, et cetera, illegal possession of ammunition, and CDS possession not marijuana. The Court received a communiqué from him on October 22nd, 2019, and I ordered it be set for a hearing, because in the motion it appeared that he was asking about whether he felt his counsel was acting on his behalf. So I wanted to have, him to have an opportunity to come to court and find out if he wanted to terminate the representation of his counsel or whether he was preparing to represent himself or how he would like to proceed. So, sir, we're here for that purpose. What would you like to tell the Court about your intent with reference to counsel?

[SHAW]: Well, presently I would like to say that, based on the information that I had provided the...

COURT: I'm sorry, that you had provided to you?

[SHAW]: No, in what I filed with the Court.

COURT: Okay, that letter you mean?

[SHAW]: No, not the letter, the, uh, for insufficient counsel.

COURT: Well, this is, I'm referring to a letter that you wrote.

[SHAW]: Okay.

COURT: And it was filed on October 28th, 2019. You dated it October 22nd, 2019. Would you like to see a copy of what I'm referring to?

[SHAW]: October 28th, 2019, yes.

COURT: Okay. Do you want to see a copy?

[SHAW]: Yes, if you have something.

(Defendant looking at document.)

[SHAW]: Okay, I see what you talking about, all right.

COURT: So here's the reason I set today's hearing. We have a trial date on December 3rd, 2019, a pre-trial conference on November 27th, 2019, and I read this to suggest to me that you may want to discharge your counsel.

[SHAW]: Yes, ma'am.

COURT: While you are operating with counsel, your counsel files all motions on your behalf. Your counsel files, and only your counsel can file things on your behalf, so your pro se filings aren't considered by the Court because you're represented by counsel. Do you understand that?

[SHAW]: Yes, ma'am.

COURT: And so Ms. Fultz is here, she's scheduled to be your legal representative on the trial date. And if you intend to terminate her services, that's going to have an effect on all of these proceedings. Potentially. What is your preference with

reference to representation? Are you choosing to represent yourself?

[SHAW]: I'm seeking to, for new representation.

COURT: Well, so tell me about that. Are you suggesting that you're going to hire a private lawyer?

[SHAW]: I had sent a letter out prior to this, I mean, after this, but then it got sent back because I didn't have a, I didn't put the certificate of service on there. And I just sent it out Tuesday, sent it back out Tuesday, asking for representation from the Court.<sup>[1]</sup>

COURT: Okay. So you're not hiring your own lawyer?

[SHAW]: No.

COURT: So the options that the Court has are, to allow you to continue representation with Ms. Fultz, to represent yourself, or Ms. Fultz can ask that the case be reassigned in her office. But that's solely within the discretion of the Public Defender. So if she does not have grounds to have it reassigned, then you will either have Ms. Fultz or no one. The understanding that I have is that you were concerned with her representation.

[SHAW]: Yes, ma'am.

COURT: Have you shared that with her?

[SHAW]: I mean, uh, basically, like, this is after, after we talked and went through the proceedings and all that, like, hindsight is 20/20, so, like, I have not had a chance to communicate this with her.

COURT: Okay.

MS. FULTZ: And, Your Honor, if I can add, Ms. Simpson was in receipt of his pro se filings. I believe she came

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<sup>1</sup> Although Shaw's second letter to the court was dated October 24, 2019, two days after the first letter, it was postmarked Nov 6, 2019, and appears to have been received by the court only after the hearing on Shaw's request for new counsel. There is a notation by the court, dated November 13, 2019 stating that "[t]his request was addressed on the record at a hearing on November 7, 2019." The court took no additional action after receiving Shaw's second letter.

out to the jail -- Did she come out to the jail and  
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[SHAW]: No, no one came to see me.

MS. FULTZ: But she discussed it with me, and she gave the file back to me so she did not indicate that she was going to be reassigning the matter.

COURT: So Ms. Simpson is the District Public Defender for Wicomico, Somerset, Dorchester, Worcester, so she's kind of the administrative head. And she's also a lawyer, who practices routinely felony level trial work. She is entitled to review what you've written and to make the decision about whether she'll reassign Ms. Fultz, another attorney other than Ms. Fultz. And apparently she's indicated that she will not do that. If you terminate Ms. Fultz'[s] representation, you terminate the entire Public Defender's Office as a legal representative option for the Court. And I don't have a third party attorney who operates without fee for you. So, how would you like to proceed given the fact that we have trial coming up?

[SHAW]: Well, I would like to proceed as, uh...

COURT: I'm sorry?

[SHAW]: I would like to proceed as I, as I filed with a new attorney, I'll try to seek one myself.

COURT: Well, so right now, do you have the ability to hire private counsel and be ready to go to trial?

[SHAW]: Yes.

COURT: All right. Well, so right now, on the trial date -- Where are we in *Hicks*<sup>[2]</sup>?

STATE: I believe it was postponed once before, so *Hicks* is probably coming up shortly. I don't have the exact date unfortunately, I'm sorry, Your Honor.

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<sup>2</sup> *State v. Hicks*, 285 Md. 310 (1979) (requiring a criminal defendant to be brought to trial within 120 after the appointment of counsel).

COURT: I have December 28th, 2019. So I'm concerned, Ms. Fultz, that the Defendant is not agreeing to represent himself and does not have new counsel who is able to enter their appearance on his behalf. Which means that there's no, there would be no legal representative if I struck your appearance at this point in time. So I'm not inclined to do that yet. If and when private counsel can enter their appearance, we can revisit that situation. Because the alternative would be the Defendant would be representing himself. And I'm not hearing you say that that's what you want; is that right, sir?

[SHAW]: Yes, ma'am.

COURT: So I'll go ahead and indicate that, for the time being, Ms. Fultz will remain counsel of record. The Defendant is expressing a desire to retain private counsel. But, of course, the *Hicks* date is coming up, and that would be an administrative judge's decision about whether or not to postpone the case if new counsel should enter their appearance and be ready to represent the Defendant. Sir, you are going to have to move swiftly so that there is no doubt about somebody being able to step in to represent you. Do you understand that?

[SHAW]: Yes, ma'am.

COURT: Okay. So that was the status. Now we have some upcoming hearings, so he'll be back before the Court, there is going to be a witness that is, that the State has to transport. Is that the same case? I have a lot of these types of motions that I consider.

STATE: I don't think so in this case.

COURT: Okay. So the pre-trial conference is November 27th, he'll be back before the Court, before all the witnesses have to be present, we can revisit where we stand at that point in time. But for today's purpose he is proceeding with Ms. Fultz



until private counsel can enter their appearance.  
All right. So ordered.

Following the hearing, the circuit court issued an Order on November 15, 2019 denying Shaw’s request. The Order read:

On October 24, 2019, the Defendant, Leo Donnell Shaw, requested the Court to discharge his present Counsel. A Status of Counsel hearing was held on November 7, 2019, whereby the Defendant requested discharge of counsel and was informed that if he discharged his present counsel he would have to retain private counsel. Defendant’s Counsel, Tamika Fultz, then represented that the District Public Defender, Chastity Simpson, was consulted and declined to reassign the case to another public defender. Defendant stated that he was unable to hire private counsel and therefore withdrew his request to terminate his counsel. Wherefore, it is by the Circuit Court for Wicomico County, State of Maryland, hereby;

ORDERED, that the Defendant’s Request for New Counsel shall be DENIED.

At the next status hearing, on November 17, 2019, the matter of Shaw’s request for new counsel was briefly raised by his appointed counsel:

MS. FULTZ: And, Your Honor, there was an issue in the past where Mr. Shaw had indicated he wanted to hire private counsel. So I just want to make sure you’re okay with proceeding with me as counsel, Mr. Shaw?

[SHAW]: Yes, ma’am.

MS. FULTZ: Okay.

THE COURT: Okay.

Shaw’s case proceeded on trial on December 16, 2019, with Shaw represented by his appointed attorney.

Maryland Rule 4-215(e) provides that if a defendant asks to discharge their attorney, 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.

MD. RULE 4-215(e). The Court of Appeals has distilled Rule 4-215 into three steps that a trial court must follow if a defendant requests permission to discharge their attorney: *First*, the court must inquire about and provide an opportunity for the defendant to explain the reasons for wanting to discharge counsel. *Gonzalez v. State*, 408 Md. 515, 531 (2009). *Second*, the court must determine whether there is a “meritorious reason”—good cause—for discharging counsel. *Id.* And, *third*, the court must take whatever action is appropriate based on its determination as to whether there is a meritorious reason for requesting to discharge counsel. *State v. Westray*, 444 Md. 672, 674-75 (2015). If the defendant has a meritorious reason for wanting to discharge counsel, the court is to grant the defendant’s request and the “situation reverts—insofar as concerns the right to counsel—to that of a freshly arraigned, unrepresented defendant,” which includes the opportunity for an indigent

defendant to be appointed new counsel. *Dykes v. State*, 444 Md. 642, 653 (2015). If there is no meritorious reason for the request, however, the court must advise the defendant that the trial will proceed as previously scheduled and the defendant may have to proceed without counsel if they choose to discharge their attorney and do not secure new representation. *Id.*

Strict compliance with Rule 4-215 is required, and a trial court’s failure to follow the steps constitutes reversible error that is not subject to a harmless error review. *State v. Weddington*, 457 Md. 589, 600-01 (2018); *Lopez v. State*, 420 Md. 18, 31 (2011). Rule 4-215 is intended to “protect that most important fundamental right to the effective assistance of counsel, which is basic to our system of criminal justice” and guaranteed by both the United States Constitution and by Article 21 of the Maryland Declaration of Rights. *Weddington*, 457 Md. at 600 (quoting *Williams v. State*, 435 Md. 474, 485 (2013)). Whether a trial court has complied with the requirements of Rule 4-215(e) is a question of law that we review without deference. *Id.* at 599-600.

To invoke Rule 4-215, there is no specific procedure that a defendant must follow. *Id.* at 600-01. Rather, all that is required is that there be some communication that would alert the judge that the defendant may be seeking to discharge counsel and that “further inquiry may be necessary.” *Joseph v. State*, 190 Md. App. 275, 284-85 (2010) (cleaned up). Once the court has been made aware of the defendant’s desire to discharge their attorney, it is the responsibility of “the trial judge to ensure the reason for requesting dismissal of counsel is explained.” *Id.* at 285 (quoting *Hawkins v. State*, 130 Md. App. 679,

686 (2000)). Thus, Rule 4-215 “imposes an affirmative duty on the circuit court to provide a forum in which the defendant can explain the reasons for his or her request.” *State v. Graves*, 447 Md. 230, 242 (2016) (citing *State v. Taylor*, 431 Md. 615, 631 (2013) (internal quotation marks omitted)). “Inquiry into the reasons for the request to discharge counsel is vitally important because the reasons given dictate how the court proceeds under the rule.” *Graves*, 447 Md. at 242. It is essential for the court to “actually consider the reasons for the request, and make a further inquiry if necessary, to determine whether those reasons are meritorious.” *Id.* at 243 (citing *Moore v. State*, 331 Md. 179, 186 (1993)).

There is no question here that Rule 4-215 was implicated. Shaw’s letter requested a change of counsel. The circuit court acknowledged as much by scheduling a hearing in response to Shaw’s letter. To ensure that the dictates of Rule 4-215 have been met, however, it must also be apparent from the record that at the hearing the court followed each step and considered the merits of the defendant’s reasons for wanting to discharge counsel. The record here fails to do that.

By setting the matter for a hearing, the circuit court ostensibly provided a forum for Shaw to explain why he might have wanted to discharge his attorney. But merely scheduling the hearing was insufficient to satisfy the court’s responsibilities under Rule 4-215. Once the hearing had convened, “the onus [was] on the trial judge to ensure the reason for requesting dismissal of counsel [was] explained.” *Hawkins*, 130 Md. App. at 686 (citing *State v. Brown*, 342 Md. 404, 431 (1996)). The record here shows, however,

that the court failed to follow the “precise rubric” required by Rule 4-215. *Graves*, 447 Md. at 241 (quoting *Pinkney v. State*, 427 Md. 77, 87 (2012)).

The circuit court began the hearing by explaining to Shaw that the purpose was to determine *whether* he wanted to discharge his attorney, but at no point did the court inquire as to *why* Shaw wanted to discharge his attorney. The Court of Appeals has explained that “[a]sking [a defendant] whether he wanted to fire his counsel is not the equivalent of asking him why he wanted to discharge his counsel.” *Id.* at 253. “[T]he [R]ule does not expect that a defendant will know to proffer information that is not solicited by the court.” *Id.*

Moreover, although in his letter to the court Shaw had listed several reasons for wanting to discharge his attorney, the court gave no indication that it had given any consideration to the merit of those reasons nor did it allow Shaw to explain them further. Rather, any information regarding why Shaw wanted to discharge his attorney was offered by Shaw in spite of the court’s efforts to skip over hearing Shaw’s explanation. It was clear from the outset of the hearing that the court had already made up its mind.<sup>3</sup>

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<sup>3</sup> The State also argues that the circuit court could not have violated Rule 4-215 because Shaw withdrew his request for new counsel before the court ruled on it. In support of this argument, the State asserts that the court did not resolve Shaw’s request at the November 7th hearing, but had delayed making a ruling only to have Shaw withdraw his request completely at the next hearing on November 17th. We disagree with the State’s characterization of the record. We first note that the circuit court’s written Order denying Shaw’s request was dated November 15, 2019, two days before the hearing at which the State suggests that Shaw withdrew his request for alternate counsel. We also note that at the November 7th hearing, the court had made it clear to Shaw that if he chose to discharge his attorney, his only options were to hire private counsel or represent himself. Given those two options, Shaw chose to continue with appointed counsel. Making a choice based on the limited options given to him by the court is not the same as voluntarily withdrawing his request. Moreover, the fact that after trial, Shaw ultimately thanked his appointed

Strict compliance with Rule 4-215 is mandatory. *See State v. Davis*, 415 Md. 22, 35 (2010) (“Any court that fails to follow-up with the defendant following a possible, albeit unclear, Rule 4-215(e) request risks appellate reversal of its judgment. Thus, erring on the side of caution is advised.”); *Johnson v. State*, 355 Md. 420, 426 (1999) (“This Court has on several occasions resisted attempts to relax the strictures of Md. Rule 4-215. We believe that any erosion of the [R]ule’s requirements would begin the dangerously slippery slope towards more exceptions.”). If Rule 4-215 is invoked, it is imperative that the court explicitly follow each step and ensure that the record reflects the court’s actions. Because the circuit court failed to sufficiently inquire into the merits of Shaw’s request, we must reverse Shaw’s convictions. *Joseph*, 190 Md. App. at 282.

## II. SUFFICIENCY OF THE EVIDENCE

Although we have concluded that Shaw’s convictions must be reversed based on the circuit court’s failure to comply with Rule 4-215, before we can remand the case for further proceedings, we must address Shaw’s second issue alleging that the evidence was insufficient to sustain his convictions. If the evidence was insufficient to sustain the jury’s verdicts, double jeopardy would bar retrial on the same charges and remand would be unnecessary. *Turner v. State*, 192 Md. App. 45, 80 (2010) (citing *Lockhart v. Nelson*, 488 U.S. 33, 39 (1988)). We will therefore address Shaw’s argument that the State failed to

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counsel for having done her best does not relieve the court of its responsibility to follow Rule 4-215. Post-trial remediation is not sufficient to meet the strict compliance standard, and the provisions of Rule 4-215 are not subject to harmless error analysis. *Weddington*, 457 Md. at 606.

prove the possession element of his convictions because there was no evidence that Shaw knew the guns and ammunition were in the bedroom where he had been sleeping.<sup>4</sup>

The standard of review for evaluating the sufficiency of evidence supporting a criminal conviction is well settled. We must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Turner*, 192 Md. App. at 80 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)). It is the role of the jury to judge the credibility of the witnesses, measure the weight of the evidence, and draw reasonable inferences from the facts. *Turner*, 192 Md. App. at 81.

To support Shaw’s convictions, the State was required to present sufficient evidence for the jury to have found that he exercised “dominion or control over” the guns and ammunition found in the first-floor bedroom. MD. CODE, CRIM. LAW (“CR”) § 5-101(v). Possession can be actual or constructive, and exclusive or joint. *Moseley v. State*, 245 Md. App. 491, 504-05 (2020). A finding of constructive possession can be supported by circumstantial evidence alone, but that evidence “must do more than raise the possibility or even the probability of guilt. It must afford the basis for an inference of guilt beyond a reasonable doubt.” *White v. State*, 363 Md. 150, 163 (2001) (cleaned up).

There are four factors that are “widely accepted as the controlling set of guidelines for determining joint and/or constructive possession.” *Moseley*, 245 Md. App. at 505. To

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<sup>4</sup> Prior to trial, Shaw and the State entered stipulations in the record that the guns found during the search were regulated firearms and that Shaw had been previously convicted of a crime that prohibited him from possessing regulated firearms.

determine whether the evidence can support an inference of joint constructive possession, courts examine:

1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

*Id.* at 505 (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)). No one factor is conclusive evidence of possession. *State v. Gutierrez*, 446 Md. 221, 234 (2016). We will briefly address all four factors.

*First*, there was evidence that Shaw was in close proximity to the contraband items. When the search warrant was executed, he was exiting the room where the guns were located, and he acknowledged that he had been sleeping in that bedroom immediately prior to the officers' entry. In addition, there was testimony that it was not uncommon for Shaw to use that bedroom.

*Second*, there was evidence that the guns were within view and that Shaw was aware of their presence. Two of the guns were visible upon entering the room, and the third gun and extra ammunition, although not visible, were easily accessible. The rifle could be seen standing up in the closet, and one of the handguns was on the nightstand. Shaw disputes that any of the guns were obviously within view because the closet door could have been closed when he was in the room and the gun on the nightstand was somewhat obscured by other items. Neither argument makes it unreasonable for the jury to have inferred that the



items were within view when Shaw was in the room. Photos of the scene show the closet door open and the rifle easily visible. Moreover, while an argument could be made that someone making a brief foray into the room may not have immediately noticed the handgun on the nightstand, Shaw had been sleeping right next to it and some of his personal papers were found in the same nightstand, making it a reasonable inference that he was fully aware that it was there. Both of those guns were loaded when they were found. Although the second handgun and additional ammunition were not immediately visible upon entering the room, they were nonetheless easily accessible to an occupant of the room, located inside an unlocked lunchbox in the closet and under the bed, respectively.

*Third*, there was evidence that Shaw had a possessory interest in the bedroom where the guns were located. The testimony at trial was that although the bedroom in which the guns were found was considered to be Adrian Thompson's room, Shaw would sleep in the room whenever Thompson was not home. How frequently this occurred was disputed, but it was undisputed that Shaw used the room. Moreover, numerous personal items of Shaw's were found in the room, including his wallet and social security card.

And *fourth*, the circumstances support an inference that Shaw and Thompson had shared access to the room, and thus also to the guns found inside. Although the evidence that Shaw had possession of the guns and ammunition was circumstantial, there is some evidence to support each factor relevant to establishing constructive possession. We therefore conclude that there was sufficient evidence to support the jury's verdict. As a

result, it would not violate Shaw’s rights against double jeopardy should the State seek to retry him on remand.

**JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY WICOMICO COUNTY.**