UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0876

September Term, 2014

ALEXANDER D. STEVENS

v.

STATE OF MARYLAND

Zarnoch,
Leahy,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 3, 2015

On June 11, 2014, Appellant Alexander Stevens was convicted by a jury sitting in the Circuit Court for Wicomico County of possession of cocaine with the intent to distribute, possession of cocaine, possession of marijuana with the intent to distribute, and possession of marijuana; the jury acquitted appellant of possession of drug paraphernalia.[1] Appellant raises three questions on appeal:

I. Did the circuit court violate Md. Rule 4-215(e) at a pre-trial motions hearing by failing to inquire why appellant wanted to discharge his counsel?

II. Did the circuit court violate Md. Rule 4-215(e) just prior to the start of trial and after trial had begun by ruling that appellant's case would not be postponed before allowing appellant to explain his reasons for wanting to discharge his counsel?

III. Did the circuit court err when it allowed a police officer and State's witness to testify that he was "familiar" with appellant "from several previous encounters"?

We conclude that during the pre-trial motions hearing, the circuit court failed to comply with its mandatory obligation under Maryland Rule 4-215(e) to inquire as to why Appellant wanted to discharge his counsel. Therefore, we reverse Appellant's convictions and remand for a new trial. As a result, we shall not address Appellant's two remaining questions.

BACKGROUND

Because this case turns on a procedural issue, we recite an abbreviated account of

[1] The court sentenced appellant to a mandatory 10 years of incarceration for possession of cocaine with the intent to distribute and a consecutive five years of incarceration for possession of marijuana with the intent to distribute. The court merged his remaining convictions.

the facts elicited at Appellant's trial.

On the morning of December 30, 2013, several officers were conducting surveillance of Appellant's residence, located at 225 North Boulevard, Salisbury, Maryland, because they had a signed search and seizure warrant for Appellant's person and his residence. The officers executed the warrant around 1:00 p.m. after observing Appellant leave his home and enter the front passenger seat of a taxi cab. He was carrying a black backpack. The officers stopped the taxi and observed the backpack on the front passenger seat floor well between Appellant's feet.

The police ordered Appellant out of the taxi and searched him, seizing $1,306 in U.S. currency from his person. Following a K-9 scan of the vehicle, the police searched the black backpack that Appellant carried into the taxi cab, and recovered the following items: 15 baggies of marijuana totaling 10.9 grams; 9 baggies of powder cocaine totaling 2.31 grams; 7 baggies of crack cocaine totaling .9 grams; and a digital scale. An expert in the area of narcotics valuation, identification, investigations, and common practices of users and dealers of controlled dangerous substances opined that the items in the backpack were for distribution.

DISCUSSION

I.

Appellant argues that the circuit court violated Maryland Rule 4-215(e) when it failed to inquire into why he wanted to discharge his counsel. The State agrees with Appellant, and, based on our independent review of the record, so do we.

On May 9, 2014, the circuit court held pre-trial suppression hearing. At the start of the hearing, however, the following colloquy occurred:

> [APPELLANT'S ATTORNEY]: Your Honor, I have spoken with my client today. He informed me that he has been in contact with David Moore, and Mr. Moore set up a payment plan with my client and his wife. The trial date in this matter is June 11th. We are asking – he would like to retain David Moore to represent him in the motions hearing as well as the trial.
>
> THE COURT: Are you prepared to go to motions today, Counsel?
>
> [APPELLANT'S ATTORNEY]: I am, Your Honor.
>
> THE COURT: All right.
>
> [APPELLANT'S ATTORNEY]: The new date that I secured . . . was May 30th. My client is requesting a postponement to obtain Mr. Moore.
>
> THE COURT: Has Mr. Moore consulted with you, Counsel?
>
> [APPELLANT'S ATTORNEY]: He has not.
>
> THE COURT: Do you have any indication from him that he's reviewed the file and that he's ready to enter his appearance forthwith?
>
> [APPELLANT'S ATTORNEY]: No, Your Honor.
>
> THE COURT: The motion is denied.

The motions hearing was held that day, with the public defender representing Appellant. The court (a different judge presiding) denied his motion to suppress. Thereafter the case proceeded to trial as scheduled on June 11th.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights "'guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.'" *Broadwater v. State*, 401 Md. 175, 179 (2007) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). Two

independent constitutional rights stem from these provisions: an accused "has both the right to have the assistance of counsel and the right to defend Pro se." *Snead v. State*, 286 Md. 122, 123 (1979). The Court of Appeals adopted Maryland Rule 4-215 to implement these constitutional guarantees. *Williams v. State*, 321 Md. 266, 271 (1990). Regarding a defendant's right to discharge his or her counsel, Maryland Rule 4-215(e) 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). Accordingly, "[w]e review *de novo* whether the circuit court complied with Rule 4–215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012).

The question before us is whether Appellant's request for a postponement and to hire private counsel was sufficient to trigger a Md. Rule 4-215(e) inquiry. We consider the recent decision by the Court of Appeals in *Gambrill v. State*, 437 Md. 292 (2014), to be dispositive. In that case, on the day that trial was set to commence, Mr. Gambrill's

public defender advised the circuit court to the following: "Your Honor, on behalf of Mr. Gambrill, I'd request a postponement. He indicates that he would like to hire private counsel in this matter." 437 Md. at 296. The court responded, simply, "All right. Postponement is denied." *Id*. A jury trial ensued, and Mr. Gambrill was convicted of one count of telephone misuse and one count of harassment. *Id.*

Following sentencing, Mr. Gambrill appealed to this Court, arguing, *inter alia,* that reversal was required because the circuit court failed to comply with the requirements of Maryland Rule 4-215(e). *Id.* We affirmed in an unreported opinion, concluding that Mr. Gambrill did not trigger a Maryland Rule 4-215(e) inquiry because he did not express a "'clear intent'" to discharge or replace his attorney. *Id*.

The Court of Appeals reversed and remanded for a new trial. Because Rule 4-215(e) does not explain what constitutes a "request" to discharge counsel, the Court surveyed Maryland case law and the constitutional rights implicated. *Id*. at 302-04. In light of this case law, the Court explained:

> Although Gambrill's request to hire a new attorney was coupled with a request for a postponement and may not have been a paradigm of clarity, its inherent ambiguity did not relieve the judge of his obligation to comply with Rule 4-215(e); its ambiguity mandated judicial inquiry followed by a determination. To hold otherwise would be to thwart the very purpose of Rule 4-215(e), which is to give practical effect to Gambrill's constitutional options. In the absence of inquiry of Gambrill, his reasons for requesting a discharge of counsel were not elucidated so that the judge could not give practical effect to Gambrill's constitutional choices.

Id. at 305. The Court concluded:

> Gambrill's request, perhaps ambiguous, was a statement from which the trial judge could have reasonably concluded that Gambrill wanted to discharge his public defender, triggering the inquiry and determination by

> the court under Rule 4-215(e). When an ambiguous statement by a defendant or his or her counsel is made under Rule 4-215(e), the fulcrum tips to the side of requiring a colloquy with the defendant.

Id. at 306-07.

Adhering to the Court of Appeals' directive in *Gambrill*, conclude that Appellant's pre-trial request for a postponement to hire private counsel was sufficient to require the court to conduct an inquiry under Maryland Rule 4-215(e). Accordingly, because the Rule requires strict compliance, we shall reverse Appellant's convictions and remand for a new trial. We decline to address Appellant's remaining two questions for the first is moot based on our holding[2] and the second concerns a factual question that may not rise again at trial.

JUDGMENTS REVERSED.

COSTS TO BE PAID BY WICOMICO COUNTY.

[2] We note, however, that Appellant did raise his request for a continuance again on the morning of his trial. At that time, the court discussed with Appellant his attempts to retain a private attorney, specifically, his assertion that he had paid a private attorney already, but he failed to show up. Notably, the court did not discuss Appellant's reasons for wanting to discharge his public defender, whether discharge of his public defender following private counsel's failure to appear was even desired at that juncture, or whether Appellant had good reason to discharge his counsel. Indeed, when the court asked what the formal motion was, defense counsel responded that it was a motion for postponement, and the court denied the motion.

The court then called for a jury panel, and the panel was sworn. Following one question of voir dire, the State requested that the court comply with the steps required by Rule 4-215(e) at the bench before continuing, and it appears that the court did so comply. However, once the voir dire process has begun, meaningful trial proceedings have commenced, and Rule 4-215(e) is no longer applicable. *See State v. Hardy*, 415 Md. 612, 628 (2010). We are constrained to reverse.