UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0942

September Term, 2014

BRANDON CLAY HOLLINGSWORTH

v.

STATE OF MARYLAND

Zarnoch,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 6, 2015

On April 9, 2014, in the Circuit Court for Caroline County, a jury convicted Appellant Brandon Clay Hollingsworth of second-degree assault, reckless endangerment, and attempting to obstruct or hinder a law enforcement officer in the performance of a duty. On June 16, 2014, the court imposed a sentence of five years of imprisonment, with all but 18 months suspended, for second-degree assault; a concurrent sentence of one year of imprisonment for reckless endangerment; and a concurrent sentence of six months of imprisonment for the attempted obstruction and hindrance of a police officer. In his timely appeal, Appellant presents three contentions for our review:

I. Did the lower court deprive Mr. Hollingsworth of his right to counsel, in violation of the Sixth Amendment to the federal constitution, Article 21 of the Declaration of Rights, and Maryland Rule 4-215?

II. Did the lower court err in failing to consider Mr. Hollingsworth's motion to strike a juror for cause?

III. Did the lower court commit plain error in remarking, in front of the jury, that the State had presented sufficient evidence to convict Mr. Hollingsworth?

Because the circuit court failed to comply with Rule 4-215(e) at the March 26, 2014, hearing, we must reverse and remand for a new trial. The remaining issues will not likely re-occur on remand, so we decline to address them.

BACKGROUND

In 2013, Appellant was charged with first-degree assault, second-degree assault, reckless endangerment, and the attempted obstruction and hindrance of a police officer in the District Court of Maryland for Caroline County. After Appellant demanded a jury trial and the case was forwarded to the circuit court, Timothy Bradford, Esq. of the Office of

the Public Defender entered his appearance as Appellant's counsel on January 3, 2014. On February 5, 2014, Appellant, accompanied by Mr. Bradford, appeared before the court for a pretrial conference. Mr. Bradford informed the court that he and Appellant had "a communication issue" and that he would "get this case reassigned to someone else." Mr. Bradford also informed the court that he has told Appellant that if he does not get along with the next attorney, "at that point he's either got to get private counsel or kind of ask to represent himself at that point." Appellant then responded, "[t]hat's my intention[.]"

On March 5, 2014, the court held another pretrial conference, but Appellant failed to appear. At that time, Mr. Bradford advised the court that another attorney from the Public Defender's office, P. Marshal Long, Esq., would take over representation of Appellant. On March 26, 2014, the court held a third pretrial conference during which Appellant appeared with Mr. Long present. The following colloquy occurred:

> MR. LONG: . . . Your Honor, um, [Appellant] has indicated to me in the hall that he no longer wishes to have the Public Defender represent him in these matters. He'll be representing himself, is that correct?
>
> [APPELLANT]: Yes, sir, it is. I'll have to get a paid lawyer, someone . . .
>
> THE COURT: Are you . . .
>
> [APPELLANT]: Someone that will actually hear what I have to say.
>
> THE COURT: Do you intend to represent yourself?
> [APPELLANT]: If I have to, I will, sir. If, when it comes to trial, jury trial, full-blown jury, I will represent myself if I have to. I, I do intend on getting, I think his name's Tim. There's another lawyer here. I've got his phone number. I'm financially stuck. That's why I haven't actually gotten a paid lawyer yet. I, it's against me.
>
> * * *

[APPELLANT]: And, and this unique case I've got undisputed proof . . .

THE COURT: I, I don't want to hear . . .

[APPELLANT]: Well this, this man doesn't want to actually . . .

THE COURT: I don't want to hear . . .

[APPELLANT]: Hear what I have to say.

THE COURT: I don't want to hear your proof.

[APPELLANT]: That's fine. He's done.

THE COURT: All right. Mr. Long is excused from the case.

MR. LONG: The Public Defender's Office, Your Honor.

THE COURT: Public Defender's Office.

[APPELLANT]: Thank you.

THE COURT: Is stricken in, in each case and your case is scheduled for a jury trial April 9th. Be here ready to go.

[APPELLANT]: Yes, sir.

On April 2, 2014, the court held a status hearing, and Appellant appeared *pro se*. After the clerk called the case, the court noted that Appellant was there without a lawyer and asked him why. The following colloquy occurred:

> [APPELLANT]: I was improperly represented. Uh, you know, I'm not intelligent enough to word it all the right words, but my lawyers would not even take a statement from me. They wouldn't talk to my witnesses. They just told me, hey here's a plea bargain. Take it, that's it or it'll get worse. And they would not even allow me to tell my story or my witnesses. So I can't have a lawyer like that. I, I've been pleaing (sic) and making attempts to prove since day one that this officer's lied and I've tried her boss, I've tried the State's Attorney. I've tried two Public Defenders and it's a losing battle. I've got proof that this cop has lied in this case and I can't help. So I, I've got more done in 30 minutes of doing it by myself than those lawyers

did out of the last six or eight months. And I have made several attempts, he, he, he's seen the calls, I've made a lot of attempts to get hold of a paid lawyer. I didn't think I needed to go that far in this case, uh, but if I have to go forward full blast by myself, I'm ready. I feel that I'll be, I'll definitely be in better shape than having a Caroline County Public Defender Represent me. There's no doubt. I'll be, uh . . .

THE COURT: Well, the Court finds that you've waived your right to Counsel at this point and the matter is set for trial. You'll likely be found to have waived your right to Counsel at the trial and that's next week.

[APPELLANT]: Yes, sir.

THE COURT: Just keep in mind that the old saying, which pretty well holds true, is that he who represents himself has a fool for a client.

[APPELLANT]: Yeah, well, I've tried, Your Honor. I really have.

Then, on April 9, 2014, Hollingsworth appeared, *pro se*, for trial, and the following colloquy occurred:

THE COURT: . . . Are you ready for trial?

[APPELLANT]: Well, out of the two . . .

THE COURT: There's two answers, yes or no, not well and blah, blah.

[APPELLANT]: Not really. No, I'm lost. I wanted a lawyer and the two lawyers that I did have wouldn't, they just told me to take a plea bargain.

THE COURT: Don't give me a lot of that. You fired two lawyers, the Judge determined you waived your attorney, your right to an attorney by neglect. Are you otherwise ready for trial? Do you have your witnesses here that you need?

* * *

[APPELLANT]: Yes, sir.

THE COURT: Have a seat. Call the jurors . . . by number.

Following trial, the jury ultimately convicted Appellant, and this timely appeal ensued.

DISCUSSION

Appellant argues that the circuit court erred by forcing him to proceed to trial without representation in violation of both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights on three occasions: the March 26, 2014, hearing; the April 2, 2014, hearing; and on April 9, 2014, trial. The State laudably concedes that the court erred at the March 26, 2014, hearing, and we agree. Rule 4-215 provides, in relevant part:

> (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.

We have stated that "[t]he provisions of the rule are mandatory and noncompliance requires reversal." *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (citations omitted).

At the March 26, 2014, hearing, the court violated Rule 4-215(e) on several grounds. First, the court did not permit Appellant to explain the reasons for his request to discharge his counsel. Second, the court did not determine whether there was a meritorious reason for Appellant's request. Third, the court failed to inform Appellant, prior to permitting the discharge of counsel, that the trial would proceed as scheduled with Appellant

unrepresented by counsel if he discharges counsel and does not have new counsel. Finally, the court did not comply with Rule 4-215(a)(4).[1] Because we conclude that the court erred at the March 26, 2014, hearing when Appellant requested discharge of his counsel, we need not further evaluate the additional alleged violations of Rule 4-215(a) and (d) that occurred at the subsequent hearing and at trial. Therefore, we reverse Hollingsworth's convictions.

JUDGMENTS REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR CAROLINE COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CAROLINE COUNTY.

[1] Rule 4-215(a)(1)-(4) requires the court to "(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel[;] (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel[;] (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any[; and] (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel." Although the district court advised Appellant regarding the first three requisites, the court never complied with subsection (a)(4), which requires the court to conduct an inquiry pursuant to Rule 4-215(b) if a defendant expresses a desire to waive counsel. Subsection (b) requires a court to examine the defendant on the record and then determine and announce on the record that the defendant knowingly and voluntarily waived his or her right to counsel. The court failed to do so.