Circuit Court for Baltimore City
Case No.: 118149022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1786

September Term, 2019

LAMONT JONES

v.

STATE OF MARYLAND

Kehoe,
Gould,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: April 19, 2021

Appellant Lamont Jones was indicted in the Circuit Court for Baltimore City and charged with possession of heroin with intent to distribute, possession of heroin, operating a vehicle in an unsafe condition, and driving on a revoked license. Prior to trial and over Mr. Jones's objection, the court allowed the State to amend the charging document to substitute fentanyl for heroin in the first two charges. Appellant was tried by a jury and convicted on all counts. He was sentenced to ten years for possession of fentanyl with intent to distribute, to be followed by a consecutive one year sentence for driving on a revoked license, with the sentences to run consecutive to any sentence he was then serving. The remaining sentences were either merged or suspended. Appellant timely appealed and asks us to consider the following questions:

1. Did the trial court err in amending the charging document?

2. Did the trial court err in permitting Appellant to represent himself in the absence of a waiver colloquy compliant with Maryland Rule 4-215?

For the following reasons, we shall vacate appellant's convictions for possession of fentanyl with intent to distribute and possession of fentanyl, and we shall reverse and remand the vehicle related counts for further proceedings consistent with this opinion.

BACKGROUND

Our summary of the trial record is intended to provide context for the issues raised in this appeal, rather than a comprehensive review of the evidence presented. *See Holmes v. State*, 236 Md. App. 636, 643 (2018); s*ee also Thomas v. State*, 454 Md. 495, 498-99 (2017) ("Because the issue dispositive of this appeal does not require a detailed recitation

of the facts, we include only a brief summary of the underlying evidence that was established at trial.").[1]

Detective Leon Riley was assigned to the Tri-District Action Team for the southern, southwest, and western districts of Baltimore City, and accepted as an expert in the street level distribution and identification of controlled dangerous substances. Detective Riley testified that on May 1, 2018, he was working with several other officers in plain clothes in the 400 block of South Monroe Street, near a location he indicated was known as an "open drug shop," when he observed a green Lexus bearing a Delaware temporary tag driving in the area. The Lexus had front-end damage and was missing a side mirror on the passenger side of the vehicle.

Detective Riley initiated a traffic stop. Mr. Jones said that he had an identification card, but not a driver's license, which Detective Riley later learned had been revoked. Ultimately, through a sequence of events that are not relevant to this appeal, Detective Riley recovered from Mr. Jones's front waistband a plastic bag containing 40 gelcaps of what the detective suspected was heroin. The State later learned that the substance actually was fentanyl. Detective Riley opined that the fentanyl recovered from appellant's person was "ready for street level distribution." The State's chemist, Barry Berger, testified that the 40 gelcaps contained 18.80 grams of fentanyl, a Schedule II controlled dangerous substance. He also opined that that fentanyl was "used as a pain killer."

[1] As will be discussed further, after ruling that Mr. Jones would proceed to trial *pro se*, he was removed following a direct contempt finding and tried *in absentia*. No issue is raised with respect to the contempt ruling, but we note that the testimony of the State's witnesses was elicited without objection or cross-examination.

We shall include additional detail in the following discussion.

DISCUSSION

I.

THE AMENDED INDICTMENT

A.

THE LEGAL PROCEEDINGS

As noted at the outset, the original indictment charged Mr. Jones with possession of heroin with intent to distribute and possession of heroin. Prior to trial, at a hearing held on June 30, 2019, the State moved to amend counts one and two of the indictment to replace heroin with fentanyl as the subject of the charges. Mr. Jones did not consent to the amendment. The State indicated that if the amendment was denied, it was inclined to nol pros the indictment and recharge the case.[2]

The court then asked if Mr. Jones was ready to proceed to trial. Counsel for Mr. Jones replied she was not prepared for trial because the lead attorney was recently assigned to military duty. Counsel also informed the court that Mr. Jones was considering proceeding without the assistance of the public defender, stating: "I don't even know that he is going to continue with the Public Defender's Office. He's indicated he doesn't want to be represented by us."

[2] "A nolle prosequi, or nol pros, is an action taken by the State to dismiss pending charges when it determines that it does not intend to prosecute the defendant under a particular indictment." *Huntley v. State*, 411 Md. 288, 291 n.4 (2009); *see also* Md. Rule 4-247(a) ("The State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court.").

The court indicated that it would postpone this case and permit the State to amend the indictment. The court stated:

> . . . I do not believe that the prejudice that the defense would have in this matter would exist in the sense of, I will allow for the amendment. And the only reason I'm allowing for the amendment is because you . . . doing a superseding indictment or recharging it will just put it back in its posture. And because of what has been proffered from [defense counsel] at [this] point, . . . I don't believe that the defense would be prejudiced in this matter. Any other time, I would deny that motion. But I am going to allow for it, the amendment to the fentanyl.

B.

ANALYSIS

The amendment to a charging document is governed by Maryland Rule 4-204, which provides:

> On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required. If amendment of a charging document reasonably so requires, the court shall grant the defendant an extension of time or continuance.

As we stated in *Albrecht v. State*, 105 Md. App. 45, 68 (1995):

> Generally speaking, amendments that have been deemed to be merely changes of form have been such things as a clerical correction with respect to the name of a defendant, the substitution of one name for another as a robbery victim, a change in the description of money, changing the name of the owner of property in a theft case, and changing the date of the offense. An amendment as to substance, by contrast, would change the very character of the offense charged.

See also Thanos v. State, 282 Md. 709, 716 (1978) ("[T]here is a change in the character of the offense charged where the amendment 'change[s] the basic description of the

offense,' [and] it is equally clear that the basic description of the offense is indeed changed when an entirely different act is alleged to constitute the crime.") (internal citation omitted).

In our view, this case is controlled by *Johnson v. State*, 358 Md. 384 (2000). There, the defendant was charged with possession with intent to distribute marijuana and simple possession of marijuana. *Id*. at 386. Prior to trial, the State was allowed to amend the charge to replace marijuana with cocaine. *Id*. The Court of Appeals concluded that the character of the offense had been changed and the amendment should not have been permitted. *Id*. at 392. The Court found significant the disparity in maximum penalties between the two charges: possession with intent to distribute marijuana, a non-narcotic drug, was punishable by five years' imprisonment and/or a $15,000.00 fine, whereas possession with intent to distribute cocaine carried a maximum penalty of 20 years in prison and/or a $25,000.00 fine. *Id*. at 391. The Court also noted that although the maximum penalty for simple possession of a controlled dangerous substance was four years' imprisonment and/or a $25,000 fine, the maximum penalty for simple possession of marijuana was one year imprisonment and/or a $1,000 fine. *Id*. Thus, the Court reasoned:

> the identification of the particular controlled dangerous substance involved in a given offense is so inextricably tied to the critical matters of the appropriate unit of prosecution and the permissible or mandated punishment that it must be treated as an element of the offense.

Id. (quoting *State v. Simpson*, 318 Md. 194, 198 (1989)).

So too here. The change in the indictment from heroin to fentanyl changed the character of the offense. Heroin is a Schedule I controlled dangerous substance, and fentanyl is listed on Schedule II. *See* Md. Code Ann. (2002, 2012 Repl. Vol.) §§ 5-402(c)(11), 5-403(c)(9) of the Criminal Law Article ("Crim. Law"). Although the primary penalty for both substances is the same, *see* Crim. Law § 5-608, the legislature has provided

for additional penalties for violations involving fentanyl, fentanyl analogues, and/or mixtures of fentanyl and heroin. *See* Crim. Law § 5-608.1 (imposing additional imprisonment for 10 years and mandating that this time "shall be consecutive to and not concurrent with any other sentence imposed under any other provision of law"). In our view, the additional potential punishment for violations involving fentanyl brings this case in line with the Court of Appeals' reasoning in *Johnson*.[3]

Although we shall reverse Mr. Jones's two narcotics offenses, his convictions for the driving violations shall remain. Citing *Brooks v. State*, 299 Md. 146 (1984), Mr. Jones argues that the driving convictions should also be reversed. *Brooks* is inapposite. In *Brooks*¸ 299 Md. at 156-57, the Court concluded that charges of robbery with a deadly weapon, conspiracy to commit armed robbery, and carrying a deadly weapon with intent to injure were interrelated. Here, the driving offenses had no similar connection to the narcotics offenses, thus, the error in permitting the amendment did not impair the validity of the charges for the driving offenses.

[3] The difference in potential punishment is reflective of the dangers in the respective substances. In that regard, we note that according to Mr. Berger, fentanyl may be used as a painkiller and has some "medical use" but that it "can be hazardous and addictive." The Maryland Department of Health has recognized differences between the two controlled dangerous substances in that fentanyl is "even deadlier" and "several times more potent" than heroin. *2016 Maryland overdose death data report released*, MD. DEP'T OF HEALTH (December 29, 2016), https://health.maryland.gov/newsroom/Pages/2016-Maryland-overdose-death-data-report-released-.aspx; *see also Opioid Overdose, Fentanyl*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/drugoverdose/opioids/fentanyl.html (last visited April 15, 2021) (observing that pharmaceutical fentanyl "is 50 to 100 times more potent than morphine" and recognizing that most cases of fentanyl related harm, overdose, and death are caused by illegally made fentanyl).

II.

WAIVER OF RIGHT TO COUNSEL

Mr. Jones contends that the court failed to comply with Maryland Rule 4-215 when it determined that he waived his right to counsel. According to Mr. Jones, the waiver inquiry was deficient because: (1) he was not properly advised of the value and importance of counsel; (2) he was never told the penalty for possession of fentanyl with intent to distribute; (3) he was not informed of the possible mandatory penalties; and (4) there was no express finding that his waiver was made knowingly. The State disputes Mr. Jones's contentions and argues that the court complied with Rule 4-215 and that Mr. Jones waived his right to counsel.

The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *See Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963); *Brye v. State*, 410 Md. 623, 634 (2009). An effective waiver of the right must be knowing and intelligent. *Brye*, 410 Md. at 634-35.

Maryland Rule 4-215 establishes the process by which the right to counsel may be waived. These requirements are "mandatory," require "strict compliance," and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012). The interpretation of the Maryland Rules is a question of law which we review without deference, *State v. Weddington*, 457 Md. 589, 598-99 (2018), and violations of the rule are not subject to harmless error analysis. *State v. Camper*, 415 Md. 44, 58 (2010).

We will first summarize the discussions pertaining to Mr. Jones's waiver of counsel and then apply those facts to the relevant provisions of Rule 4-215.

A.

MR. JONES'S DISCUSSION WITH THE COURT REGARDING WAIVER OF COUNSEL

The issue of Mr. Jones's representation first arose at the July 30, 2019 hearing when the assistant public defender informed the court that she did not know if Mr. Jones wanted to be represented by her office. No further inquiry was made by the court at that time, and the court postponed the trial.

Almost two months later and approximately ten days prior to trial, the appearance of Mr. Jones's attorney from the public defender's office was stricken by the court. When the case was called for trial, the judge noted that the court records simply indicated that Mr. Jones was proceeding *pro se* and that he had not been properly advised of his rights under Maryland Rule 4-215.

The court then asked Mr. Jones if he wanted to be represented by an attorney, and the following colloquy ensued:

> THE DEFENDANT: Okay. Well, for starting off, I never asked for nobody to represent me because they give jurisdiction to the Court over the subject matter. So I don't think I would want to be in here anyway. The only reason I'm here, a special limited appearance, but I'm under the duress of being kidnapped for being here. So it wasn't like I couldn't come.
>
> THE COURT: So if you –
>
> THE DEFENDANT: But I'm only here to just object to the subject matter of jurisdiction.
>
> THE COURT: I see. So you're saying –

THE DEFENDANT: And I think the Court has proceeded with his appearance as my consent to this jurisdiction, which I didn't ever give.

THE COURT: Okay. So you're saying that you never asked for a counsel.

THE DEFENDANT: Never did.

THE COURT: And so you don't wish to have counsel.

THE DEFENDANT: I don't need counsel. I'm competent. I'm over 18 years of age. I'm competent.

The court then made the following inquiry:

THE COURT: Okay. Now sir, do you understand the charges that have been brought against you?

THE DEFENDANT: No, I do not.

THE COURT: Did anyone ever advise you of what the charges are or give[] you a copy of the charging document?

THE DEFENDANT: No.

THE COURT: Let's make a copy of the charging document for the Defendant, please.

THE CLERK: Okay.

[PUBLIC DEFENDER]: Your Honor, I have a copy of the indictment I can give to him.[4]

THE COURT: Oh, thank you very much.

THE CLERK: Thank you.

THE COURT: And you've never been given the charging papers.

THE DEFENDANT: No, and I've never been to no proceedings nor arraignment, no motions' hearings, no nothing. So that's why I'm kind of

[4] The Assistant Public Defender was present in the court simply as a "friend of the Court."

> shocked that we done got all the way to this point with somebody else's consent, without mine.

The court then examined the Initial Appearance Report from the District Court of Maryland for Baltimore City which (1) notified Mr. Jones of his right to counsel; (2) noted his indigent status; (3) disclosed that the charge against Mr. Jones was a felony not within the District Court's jurisdiction; and (4) informed Mr. Jones that he could be released on personal recognizance with conditions for his subsequent appearance. The court noted that the report, which was signed by Mr. Jones, indicated that the charged offenses had been read to Mr. Jones. Mr. Jones responded that he signed the form under "duress" and that the form was "fraud" and "illegal."

The court reiterated the lack of prior compliance with Maryland Rule 4-215(a), and the following colloquy ensued:[5]

> THE COURT: So when you first appeared without counsel, a judge should have advised you of what I'm about to advise you of, sir. Although, I do believe that you were advised of some of this at your initial appearance with the Court Commissioner according to the form that I referred to previously that you signed.
>
> So you know have a copy of the charging document, correct? And you did get a copy of the document [from the] District Court advising you of your right to counsel. So you are aware, sir, that you have an absolute constitutional right to have an attorney represent you in these proceedings. If you cannot afford to hire an attorney of your choice, you can qualify for the Office of the Public Defender. Since you are incarcerated, you would qualify for representation. That's where [the Assistant Public Defender]

[5] As amended, Mr. Jones was charged with: (1) possession of fentanyl with intent to distribute under Crim. Law § 5-602(2); (2) possession of fentanyl under Crim. Law § 5-601(a)(1); (3) driving an unsafe vehicle under the Transportation Article, *see* Md. Code Ann., Transportation Article ("Transp.") § 22-101(a) (1977, 2020 Repl. Vol.); and (4) driving while license is revoked under Transp. § 16-303(d).

works and he was here willing to represent you. But you said that you never requested his services.

You are charged with possession with the intent to distribute heroin which carries a maximum sentence of 20 years' incarceration and/or a fine. Is it a $25,000.00 fine?

[PROSECUTOR]: Um, yes Your Honor, and I just want to make the record that on the July 30th date, the State did amend the charging or the CDS related charges to fentanyl.

THE COURT: Okay. I did see something in there about amending the charges to Fentanyl.

[PROSECUTOR]: Yes, Your Honor.

THE COURT: All right and then you're charged with possession of Fentanyl, which carries a one year maximum sentence and a fine. You're charged with failure to properly equip and locate head lamps on the motor vehicle. What is the maximum, there's probably just a $500.00 fine for that?

[PROSECUTOR]: Yes, Your Honor. That's the maximum.

THE COURT: And driving on a revoked license or privilege. Is that –

[PROSECUTOR]: A one year, $1,000.00 –

THE COURT: One year, $1,000.00 fine. So . . . that's what you're charged with. So with respect to the possession with the intent to distribute the fentanyl and possession of fentanyl, the State would have to prove that you had either on your person or in your control or custody a substance that was later analyzed and determined to be fentanyl and you had it in a sufficient amount to indicate that it wasn't for personal use. It was for distribution. Distribution means to give away, sell, transfer from one person to another a substance known as fentanyl. Also, apparently the headlights were not working on . . . your vehicle at the time of the incident and your license was revoked. And yet, you were driving.

Mr. Jones then contended that he did not understand the charges and that he did not understand why the case was proceeding to trial. The court inquired what he did not

understand, and Mr. Jones replied: "I need to understand the proceedings before I know the charges." The discussion continued:

> THE COURT: All right. So for the record, the Defendant refuses to explain why, what he doesn't understand about the charges.
>
> So as I explained to you that, I mean you've come here to trial now and you haven't gotten counsel. So do you have a reason for why you have not gotten an attorney, sir?
>
> THE DEFENDANT: Because I do not wish to sign any contracts with this Court.
>
> THE COURT: All right. So since you, do you ever intent on getting counsel?
>
> THE DEFENDANT: No, I do not. No, that's another contract. I do not want to sign no contracts.

The court then inquired as to appellant's age, his level of education, whether he was suffering any mental illness, or was taking any medications. After this colloquy, the court stated "I am finding that you are voluntarily waiving your right to counsel. So that means that you are going to go forward to trial without an attorney. And this is your trial date."[6]

B.

WHETHER MR. JONES WAIVED HIS RIGHT TO COUNSEL

Maryland Rule 4-215 provides, in relevant part, the following:

> **(a) First Appearance in Court Without Counsel.** At the defendant's first appearance in court without counsel, or when the defendant appears in the

[6] After further discussion, including an entry of a not guilty plea, Mr. Jones became upset and announced that "I'm leaving," and then unleashed a number of expletives about the court and the proceedings. The court responded by advising Mr. Jones of his right to be present for trial, but that his disruptive behavior constituted grounds to find him in direct contempt. The defendant was then removed and the court proceeded to try him *in absentia*. No issue is raised on appeal with respect to Mr. Jones's trial *in absentia*.

District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

> (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.
>
> (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.
>
> (5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.
>
> (6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel. If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After

> there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.
>
> * * *
>
> **(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.

Appellant first contends that error occurred on July 30, 2019 because the court failed to honor his request to discharge counsel. "[A] request to discharge counsel is 'any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel.'" *Gambrill v. State*, 437 Md. 292, 302 (2014) (quotation omitted).

Initially, it is not clear that Mr. Jones ever agreed to representation by the Office of the Public Defender. Regardless of whether he requested representation, there is no doubt that he was represented. We note, among other things, that Mr. Jones's objection to the amendment of the charging document was asserted on his behalf by counsel, and it is that objection that permits us to review that issue on the merits. In our view, therefore, given that Mr. Jones was represented by counsel, the court erred by failing to apply the discharge of counsel provisions of Rule 4-215(e).

Nonetheless, our primary inquiry is whether the court complied with the waiver provisions of Rule 4-215(a) and (b). As stated by the Court of Appeals: "[a]ny decision to waive counsel . . . and represent oneself must be accompanied by a waiver inquiry designed to ensure that [the decision] is made with eyes open and that the defendant has undertaken waiver in a knowing and intelligent fashion." *Broadwater v. State*, 401 Md. 175, 181 (2007) (internal quotation marks omitted) (quoting *State v. Brown*, 342 Md. 404, 414 (1996)). Furthermore, "[t]he court must comply *strictly* with the requirements of Rule 4-215(a) before accepting a defendant's waiver of counsel." *Brye*, 410 Md. at 637 (emphasis added).

Mr. Jones argues that the court violated subsections (a) and (b) in four respects. First, Mr. Jones asserts that the court did not communicate the value and importance of counsel, as required by 4-215(a)(2). We agree. We note that Mr. Jones's Initial Appearance Report form from the District Court does not indicate that he had been advised of the value and importance of counsel. Moreover, although the circuit court informed him that he had a right to counsel, it did not explain how or why counsel could be of value and importance to him.[7] We hold, therefore, that in violation of Rule 4-215(a), Mr. Jones was

[7] The State contends that the court later salvaged the waiver by telling Mr. Jones that an attorney "could advise you of what the law in fact is." We disagree. This comment came after the court had already found the waiver to be knowing and voluntary, and only in the context of Mr. Jones's insistence that he needed Black's Law Dictionary to understand the basis for the court's jurisdiction. This was inadequate because Mr. Jones's understanding of the basis for the court's jurisdiction or of any other legal matter, while nice, was at best secondary in importance to an attorney's ability to assert and protect Mr. Jones's interests during all phases of the trial by, among other things, making appropriate objections to the admission of evidence, cross-examining the State's witnesses, presenting

not properly advised of the value and importance of counsel. *Cf. Webb v. State*, 144 Md. App. 729, 746-47 (2002) (observing that advice that "a lawyer can be very helpful . . . in preparing information for the Court to consider" was adequate).

Second, Mr. Jones asserts that he was never advised of the potential penalty for possession of fentanyl with intent to distribute or the potential mandatory penalties in this case.[8] Again, we agree.

Mr. Jones was charged under Crim. Law § 5-602, which prohibits possession of "a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." This prohibition applies equally to heroin and fentanyl as both are considered "controlled dangerous substances." *See* Crim. Law §§ 5-402(c)(11), 5-403(c)(9).

The court first informed Mr. Jones that he was charged with possession with intent to distribute heroin, which carried a maximum sentence of 20 years' incarceration and/or a $25,000.00 fine. The State reminded the court that the charge had been amended to fentanyl. The court then told Mr. Jones that he was charged with possession of fentanyl "which carries a one year maximum sentence and a fine." The court made no mention of the maximum sentence and fine for conviction of possession with intent to distribute fentanyl. The State argues that the court did not do so because the maximum sentence for

witnesses and evidence on Mr. Jones's behalf, and performing the myriad of other tasks routinely performed by competent defense counsel.

[8] Mr. Jones does not dispute that he was properly advised of the potential penalties for the vehicular offenses.

possession with intent to distribute is the same for fentanyl and heroin. We are not persuaded.

Under Rule 4-215, the trial court must make a defendant aware of *all* possible penalties for all of the charged crimes. *Camper*, 415 Md. at 57 (holding that the trial court needed to inform the defendant of enhanced penalties for subsequent offenses, even where the defendant may have had knowledge of the penalties). As the Court of Appeals has explained, "[a]bsent information as to mandatory or enhanced penalties, it could hardly be said that a defendant makes a knowing and voluntary decision to waive counsel with eyes open or with full knowledge of the ramifications of the choice." *Knox v. State*, 404 Md. 76, 88 (2008). Further:

> To satisfy Rule 4-215, the court need only advise a defendant of the mandatory penalties set out in the statute under the offense charged, or, advise the defendant that *if* the defendant is a subsequent offender, that there may be enhanced penalties, and to recite the possible enhanced penalties. The court does not need actual knowledge of the defendant's status in order to give the advice.

Id. at 89.

While we have no doubt that the court and the State understood that the maximum sentences were the same, we have no reason to assume that Mr. Jones understood this. The court's failure to advise Mr. Jones of the maximum sentence and fine for possession with intent to distribute fentanyl was another violation of Rule 4-215.

Last, Mr. Jones contends that although the court found his waiver under subsection (b) was voluntary, it never expressly found that his waiver was "knowing." The State counters that the court was not required to use the magic word "knowing" to make a proper

finding of waiver. While we agree with that general premise, we nevertheless cannot conclude, on this record, that the court did, in fact, find that the waiver was knowing. Indeed, Mr. Jones made several statements during the hearing that seem to indicate a fundamental lack of understanding about the nature of the proceedings, including remarks about the court's jurisdiction, his professed competence notwithstanding his lack of understanding of the charges against him, and his unwillingness to sign a contract "with this Court" as his explanation for not having an attorney. Such comments and non sequiturs were or should have been red flags; thus, on this record, the conspicuous absence of a finding of a "knowing" waiver constitutes a violation of Rule 4-215. Accordingly, we shall vacate the judgments and remand for further proceedings consistent with this opinion.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.