UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 671

September Term, 2016

MICHAEL DAVIS, JR.

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: June 26, 2017

A jury in the Circuit Court for Baltimore City convicted Michael Davis, appellant, of extortion and witness retaliation. He was sentenced to a term of ten years' imprisonment, with all but six years suspended, for the conviction of extortion and a concurrent term of five years' imprisonment for the conviction of witness retaliation. In this appeal, he presents the following questions for our review, which we have reordered for the purpose of this opinion:

1. Did the circuit court err by failing to determine that appellant knowingly and intelligently waived his right to counsel under Maryland Rule 4-215(e)?

2. Did the circuit court err by allowing the State to inquire into appellant's fifteen-year-old resisting arrest charge for which he was not convicted?

For reasons to follow, we answer both questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

In the afternoon hours of June 23, 2015, Baltimore City Police Officer Maxwell Anderson was driving his patrol vehicle in the 1100 block of Bayard Street in Baltimore City when he observed an individual, later identified as appellant, leaning through the open window of a vehicle that was idling at the curb. As Officer Maxwell drove in appellant's direction, the vehicle pulled away from the curb, at which time appellant turned and walked toward the front stoop of a nearby residence. As Officer Maxwell got closer to appellant's location, the officer observed that appellant had dropped a bag on the stoop that appeared to contain "Ziploc bags of drugs."

When Officer Maxwell pulled his vehicle next to appellant and asked whether appellant lived at that residence, appellant grabbed the bag and walked away. Then, as another officer, Christopher Timms, approached appellant on foot, appellant "took off in a full sprint." Officer Timms gave chase and observed appellant "throw the plastic bag of suspected narcotics over a wooden gate into a yard." Officer Timms stopped chasing appellant and went into the yard, where he recovered the bag, the contents of which later tested positive for cocaine. At this point, several other officers had joined in the pursuit. One of these officers came in contact with a nearby resident, Gardner Chamness, who pointed in the direction that appellant had fled. After a few minutes, appellant was found lying in tall grass in a nearby residential yard and was arrested.

Approximately one month later, on July 22, 2015, Mr. Chamness was at his home doing yard work with two of his ex-girlfriend's younger sons when appellant approached him and asked, "Why'd you rat me out?" Appellant then said, "What's to say that I don't just pull out and kill you and your kids?" After "going on about how he got arrested and that he was falsely accused," appellant walked away, but then turned around and stated, "In two weeks, I'll be back for $1,000. You better have my money." Appellant then stated, "You're going to pay for my bail. And then two weeks after that, I'm going to come back for the rest of it." Mr. Chamness eventually went to the police station to report the incident.

Appellant was ultimately charged with two counts – possession of cocaine and possession of cocaine with intent to distribute – related to the June 23rd incident and two

counts – extortion and witness retaliation – related to the July 22nd incident.[1] After several postponements, appellant's trial was set for March 18, 2016.

At the start of trial on March 18, defense counsel, Linda Zeit, Esquire, informed the court that appellant had "expressed a desire on previous occasions to represent himself." When the court asked Ms. Zeit whether appellant wanted her to represent him, she responded that it was "hard to say." The court then asked appellant if he wanted to have Ms. Zeit as his attorney, and he responded, "Yes, sir. I will keep her." Ms. Zeit was then granted a postponement, and a new trial date was set for April 26, 2016.

At the start of trial on April 26, Ms. Zeit again told the court that appellant "wanted to represent himself." Appellant was then sworn in, and the court asked him several preliminary questions, including his name, current address, date of birth, and level of education. The court asked appellant whether he wanted to give up his right to counsel and represent himself, and appellant responded, "Yes, sir." The court then confirmed with appellant that he had received a copy of the indictment and instructed him on the nature of the charges, and the elements the State needed to prove for each charge, and the potential penalty of each charge. After the court's instruction on each charge, appellant indicated that he understood the nature, elements, and potential penalty of each charge.

The court then informed appellant of his rights and the various benefits he would be foregoing by proceeding without counsel:

[1] The two incidents were originally charged under two separate indictments, each containing their respective counts; however, the State later moved to have the cases joined. The circuit court granted the motion, and appellant was tried on all four counts as part of a single trial.

THE COURT: Sir, you understand you have an absolute right to be represented by an attorney at every stage of these criminal proceedings; you understand that?

APPELLANT: Yes, sir.

THE COURT: Okay. And I'm going to go over this a little more in depth, but you understand a lawyer can give you important assistance in determining whether there may be defenses to the charges and in generally preparing you and representing you at trial; do you understand that?

APPELLANT: Yes, sir.

THE COURT: And even for some reason you intended to plead guilty, it appears you do not. If you did, a lawyer also would give you substantial help in obtaining information that could affect your sentence or other disposition; do you understand that?

APPELLANT: Yes, sir.

THE COURT: All right. Sir, just to make sure, you've received a copy of the charging documents for each of these cases?

APPELLANT: Yes, sir.

THE COURT: Okay. Sir, do you understand what a lawyer or counsel does?

APPELLANT: Yes, sir.

THE COURT: Okay. You understand that lawyers are specially trained to assist people in defending themselves against criminal charges?

APPELLANT: Yes, sir.

THE COURT: And a lawyer, again, can render you important assistance as in talking to – in assisting you in determining there may be defenses to the charges; do you understand that?

APPELLANT: Yes, sir.

THE COURT: Do you understand what it means that counsel will represent you at trial?

APPELLANT: Yes, sir.

THE COURT: You understand that counsel will question or cross-examine the State's witnesses?

APPELLANT: Yes, sir.

THE COURT: Will call and question witnesses on your behalf, including yourself, if you decide to testify?

APPELLANT: Yes, sir.

THE COURT: They'll make legal argument on your behalf; do you understand that?

APPELLANT: Yes, sir.

THE COURT: They will present the facts as favorably as possible to you before either a judge or a jury?

APPELLANT: Yes, sir.

* * *

THE COURT: All right. Do you have any questions about your right to counsel?

APPELLANT: No, sir.

THE COURT: All right. So I'm sorry, you just represented to me that you graduated from college, right?

APPELLANT: Yes, sir.

THE COURT: So I'm clearly –

APPELLANT: Competent mind.

THE COURT: Okay. And I am satisfied that you have the intelligence, capacity to appreciate the consequences of the decision not to have an attorney. It appears that I've complied with Rule 4-215(a). Yeah. So, sir, do you understand that this particular waiver of giving up your right to counsel will require you to represent yourself at trial?

APPELLANT: Yes, sir.

THE COURT: You understand your decision to waive or give up counsel to represent yourself may hurt you at trial since you do not have special training as an attorney, do you understand that?

APPELLANT: Yes, sir, I do.

THE COURT: You understand that if you decide to represent yourself you'll be expected to comply with all the relevant rules for trials of criminal cases –

APPELLANT: Yes, sir.

THE COURT: All right. You understand that your rights at trial include the right to call witnesses on your own behalf; the right to confront and cross-examine the prosecution's witnesses; the right to obtain witnesses by compulsory process, that means service by summons; and the right to require proof of the charges beyond a reasonable doubt; do you understand all that?

APPELLANT: Yes, sir.

THE COURT: You understand that counsel would do those – these things for you and that it would protect your rights; do you understand that?

APPELLANT: Yes, sir.

THE COURT: You understand, most importantly, you're not going to be able to complain later on if you're convicted that you made a mistake in representing yourself.

APPELLANT: Yes, sir.

THE COURT: Okay. So do you still wish to waive or give up your rights to have counsel represent you on these charges?

APPELLANT: Yes, sir.

The court then asked appellant whether he had any questions about his rights, and appellant mentioned the fact that he was being held without bail pending trial. Appellant indicated that he needed to be at home in order to adequately represent himself, at which time he asked the court if he could be released. The court denied appellant's request. Appellant continued to plead his case, arguing that his bail was revoked because of "a State's Attorney coming into the courtroom with unclean hands by falsifying a fraudulent affidavit." The court eventually interrupted appellant and informed him that it was "trying to determine" whether he was "knowingly and voluntarily giving up" his right to counsel.

After the court again asked appellant whether he had any questions about his right to counsel, to which appellant responded that he did not, the court asked whether appellant was discharging counsel because he was dissatisfied with Ms. Zeit or because he simply wanted to represent himself. The following colloquy ensued:

APPELLANT: Will Ms. Zeit represent me today if I was in a jury trial? But I do want to represent myself.

THE COURT: Okay. That's – those are two completely different things, sir, you're asking for.

APPELLANT: So this is a jury trial?

THE COURT: Sir, it's – you have a right to a jury trial, okay? And we – depending on where this case goes or we're going to go to trial, that's going to have to be discussed.

APPELLANT: Okay.

THE COURT: You have a right to a jury trial; you could also give up that right to a jury trial in which case you would have a court trial.

APPELLANT: Okay.

THE COURT: You'd be tried in front of a judge like me.

APPELLANT: Okay.

THE COURT: But that's your choice. That's a whole 'nother discussion.

APPELLANT: Okay.

THE COURT: So the question is now, from my understanding of what's been presented to me, is that you affirmatively – sir, you got to listen to me, okay?

APPELLANT: Yes, sir. I have a lot –

THE COURT: You affirmatively want to represent yourself?

APPELLANT: Yes, sir.

THE COURT: Okay. You don't want to have an attorney represent you, whether it be Ms. Zeit or anyone else, right?

APPELLANT: Yes, sir.

THE COURT: Okay. So I'm going to find, determine – and I'll note for the record as is required under the rules – that you are knowingly and voluntarily waiving or giving up your right to counsel. Okay?

APPELLANT: Yes, sir.

THE COURT: So you're going to represent yourself.

APPELLANT: I want –

(Pause.)

THE COURT: Sir, I'm not forcing you – you have an extremely competent attorney. That's fine. But if you don't – if you want to represent yourself, you have a right to represent yourself. That's it. I'm not encouraging you to do it. I don't know if that's necessarily a wise thing, but if you want to do it, then you have an absolute right to do it, okay? All I just need to know is is [sic] that what you want to do, sir?

(Pause.)

APPELLANT: No, sir. I want to take this to jury trial.

THE COURT: No, sir, what?

APPELLANT: No, sir, that I don't want to represent myself, but I do want to take this to a jury trial.

THE COURT: Okay. Well, that's what we're here for.

APPELLANT: Okay.

THE COURT: Okay.

APPELLANT: Yes, sir.

THE COURT: That's fine. You're sure of that sir?

APPELLANT: Yeah, I've thought about it.

THE COURT: So you can't –

APPELLANT: Can't change it.

THE COURT: – you understand you're not going to complain later on, oh, man, I should have represented myself.

APPELLANT: No, sir.

THE COURT: You understand that?

APPELLANT: Yes, sir.

After appellant withdrew his request to represent himself and indicated his desire to proceed with Ms. Zeit as his attorney, Ms. Zeit requested a postponement. Over the State's objection, the court granted the request and reset the trial for May 25, 2016.

At the start of trial on May 25, appellant once again informed the court that he wanted to discharge Ms. Zeit as his attorney. This time, however, he stated that he did not want to represent himself but rather that he wanted "to get another public defender." While engaging in an extended discussion with appellant regarding his reasons for wanting to discharge Ms. Zeit, none of which the court found meritorious, the court informed appellant multiple times that it would not be postponing the case and, if appellant wanted to discharge Ms. Zeit, he would have to represent himself during the trial. At the end of the discussion, the following colloquy ensued:

THE COURT: So here's, again, I don't find that there's a meritorious reason for you to fire Ms. Zeit. The question is, if you don't want her, you don't have to have her but you're going to be on your own in trying this case. What is your decision?

APPELLANT: So I can't – I can't –

THE COURT: What is your decision? Either you are on your own or you have Ms. Zeit standing next to you trying your case. It's either that or the other.

APPELLANT: I can try my case by myself, ma'am.

THE COURT: Okay. Not a problem. Ms. Zeit, I'm going to ask that you would remain in the courtroom.

MS. ZEIT: Absolutely, I will.

The court then proceeded with pretrial preparations, which included informing the parties as to the questions the court would be asking the jury venire during voir dire. In so doing, the court asked appellant if he had any witnesses he wanted the court to mention during voir dire, and appellant gave the names of three witnesses. The following colloquy ensued:

THE COURT: Now I'm going to tell you, Mr. Davis, unless you know the rules of evidence and know how this procedure goes, it's not going to be easy and I'm not stopping and I cannot assist anyone in what it is that they're doing. Ms. Zeit has been practicing law for years.

Now it is up to you, but I'll tell you picking the jury is not easy. Trying a case is not easy. Keeping people – I'm talking to you.

APPELLANT: Yes, ma'am.

THE COURT: Keeping evidence, keeping the State from putting in evidence, you've got to know how to do it. If you don't know how to do it, it's going to be troublesome for you. People went to school to learn how to do this….I'm talking to you, Mr. Davis.

APPELLANT: Yes, ma'am.

* * *

THE COURT: So I'm just letting you know, Ms. Zeit is still here. Do you need her assistance, sir?

APPELLANT: I just –

THE COURT: Do you need her assistance, sir?

(Pause.)

THE COURT: Do you need her assistance?

APPELLANT: Yes, ma'am. I – I use –

THE COURT: I think you do. Ms. Zeit, come on back up to the table.

From that point forward, Ms. Zeit acted as appellant's attorney and handled all aspects of his defense. At no time during the trial did appellant do anything to indicate that Ms. Zeit was not his attorney or that he was representing himself.[2] Moreover, at no time during the trial did appellant indicate a desire to discharge Ms. Zeit or to represent himself.

Appellant eventually testified on his own behalf. As part of that testimony, appellant was asked about the events of June 23, 2015, specifically, whether he possessed a bag of drugs prior to being arrested:

[DEFENSE]: Did you ever see a bag of drugs that day?

APPELLANT: Never. I don't sell drugs. I don't have a drug record. I never sold drugs. I don't have a criminal record.

During cross-examination, the State asked appellant about his criminal record:

[STATE]: You said that you have no criminal record?

APPELLANT: No criminal record.

[STATE]: No criminal record at all?

APPELLANT: Never been found guilty for nothing. Nolle prosses. I have one CDS charge in 2008 which was a PBJ. After I graduated John [sic] Hopkins, they gave me unsupervised probation for six months and I took it so I can go to work for Channel 11.

[STATE]: And –

[2] At one point, appellant attempted to address the court while Ms. Zeit was speaking, and the court admonished him, stating that "she is your lawyer." Appellant responded, "Yes, ma'am."

APPELLANT: So is that what you're talking about? That was for marijuana. Stopped, and know I have to tell the whole truth and nothing but the truth.

[STATE]: And no other criminal record?

APPELLANT: What? No, I don't.

[DEFENSE]: Objection.

APPELLANT: What other criminal records you talking about?

THE COURT: Let me say this, Mr. Davis, she's going to ask questions. You get to answer them. You can't ask questions.

APPELLANT: Yes, ma'am.

THE COURT: Thank you.

[STATE]: 2001, resisting arrest?

APPELLANT: 2001 was found not guilty, nolle prosses.

[STATE]: You didn't receive a probation before judgment?

APPELLANT: No, I didn't.

[STATE]: Count III?

APPELLANT: 2001? That's what, that's 12, 13 years ago? No, I was 21 at that time. I'm 30 – I was 35. So we talking about who was the same person and what was this arrest or this probation for?

At this point, the State ended its inquiry into appellant's criminal record. Appellant was ultimately convicted of extortion and witness retaliation but was acquitted of possession of cocaine and possession of cocaine with intent to distribute.

DISCUSSION

I.

Appellant first argues that the circuit court, on two separate occasions, committed reversible error by failing to investigate whether his waiver of counsel was voluntary. Appellant maintains that, following his request to discharge counsel on April 26, 2016, the hearing court was required, under Maryland Rule 4-215, to "clearly explore" whether he was acting voluntarily when waiving his right to counsel. According to appellant, however, the hearing court failed to make such an inquiry. Appellant further contends that, because of the hearing court's error, the onus was on the trial court to also "clearly explore" the voluntariness of appellant's waiver following appellant's request to discharge counsel on May 25, 2015. And again, according to appellant, the court failed to make such an inquiry. Appellant also contends that, even if the hearing court satisfied its obligation to ensure that appellant's waiver was voluntary, the trial court was required to conduct its own inquiry, which it failed to do.

The State counters that the hearing court complied with all aspects of Maryland Rule 4-215, which, according to the State, does not require that a court engage in "an explicit inquiry regarding voluntariness." As for the trial court's alleged error, the State maintains that this issue was not preserved because neither appellant nor appellant's counsel lodged an objection at any point during the trial court's colloquy regarding appellant's desire to discharge Ms. Zeit. The State further maintains that, even if the issue was preserved, the strictures of Maryland Rule 4-215, namely, that the court "determine and announce" that a

defendant's waiver is knowing and voluntary, did not apply under the facts of the instant case.

"The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights provide that, in all criminal prosecutions, a defendant has the right to the assistance of counsel." *Fowlkes v. State*, 311 Md. 586, 589 (1988). "Under the Sixth Amendment, a defendant also has an independent right to reject the assistance of counsel and to elect to represent himself." *Id.* A relinquishment of the right to counsel "is established by an inquiry ascertaining first, whether a defendant 'clearly and unequivocally' wants to defend himself/herself, and second, whether the defendant has made a competent and intelligent waiver of the right to counsel." *Jones v. State*, 403 Md. 267, 291 (2008).

Maryland Rule 4-215 provides several ways in which a defendant may waive his right to counsel and the various procedures the court must follow depending on the circumstances. *Id.* Relevant here is Maryland Rule 4-215(e), which involves a defendant's request to discharge an attorney whose appearance has already been entered:

> 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.

Id.

Subsections (a)(1)-(4) provide that a 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.

Md. Rule 4-215(a)(1)-(4).

Section (b) provides:

> 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.

Md. Rule 4-215(b).

In sum, if a defendant who is represented by counsel seeks to discharge counsel, the court must follow the procedures outlined in Rule 4-215(e). If the court ultimately permits

the defendant to discharge counsel, the court must also comply with Rule 4-215(a)(1)-(4), provided the docket or file does not reflect prior compliance. In so doing, if the defendant indicates a desire to waive counsel, the court must then conduct a waiver inquiry pursuant to Rule 4-215(b).

Although not expressly stated in the above Rules, it is axiomatic that a defendant who seeks to discharge counsel must follow through on this desire. In other words, a court cannot be deemed to have violated a defendant's right to waive or discharge counsel if the defendant does not actually waive or discharge counsel. This Court dealt with this exact issue in *Garner v. State*, 183 Md. App. 122 (2008), *aff'd*, 414 Md. 372 (2010).

In that case, the defendant, Alphonso Garner, was charged in the Circuit Court for Queen Anne's County with committing various crimes, including possession of cocaine with intent to distribute. *Id.* at 125. Garner thereafter appeared, for the first time and without counsel, for a bail review hearing in the circuit court. *Id.* at 128. During this appearance, the court, pursuant to Rule 4-215(a)(3), advised Garner of the allowable penalties for a conviction of possession with intent to distribute; however, the court failed to inform Garner of any mandatory or enhanced penalties, despite the fact that Garner was a "fourth-time offender." *Id.* at 129. Garner eventually retained counsel but, on the day of trial, expressed to the court his dissatisfaction with counsel's insistence that Garner should plead guilty. *Id.* at 130. Although Garner never expressly indicated a desire to discharge counsel, "there loomed at least the possibility that [defense counsel] might be discharged and might remain available only in a stand-by capacity by way of giving legal advice if such advice were sought by the *pro se* defendant." *Id.* at 133.

Nevertheless, trial commenced with defense counsel handling the bulk of the duties on behalf of Garner, including conducting the voir dire examination of prospective jurors, selecting the jury, delivering the opening statement, cross-examining the State's witnesses, calling witnesses on Garner's behalf, and delivering closing argument. *Id.* In fact, Garner "did not actively participate in the conduct of his trial in any way nor did he protest his passive role." *Id.* Moreover, at various stages throughout the trial, defense counsel referred to Garner as "my client" and the State referred to him as "counsel." *Id.* Garner was ultimately convicted. *Id.* at 125.

On appeal, Garner argued that, because the court had permitted him to discharge counsel, it was required (but failed) to comply with Rule 4-215(a)(3), which related to the crimes charged and their potential penalties. *Id.* at 127. Although this Court agreed that the court's advisement under Rule 4-215(a)(3) may have been insufficient, we nevertheless held that such an advisement was not required because Garner never actually discharged counsel:

> The saving grace is that the triggering event for the imposition of Rule 4-215(a)(3) never came to pass. The activating clause in subsection (e) is: "*If this court permits the defendant to discharge counsel,* it shall comply with subsections (a)(1)-(4) of this Rule." (Emphasis supplied). In this case, the trigger was never pulled. Counsel was never actually discharged.

Id. at 130.

We further noted that our primary concern in Garner's case, which was also the same concern of Rule 4-215, was "the fundamental right of a defendant to have the effective assistance of counsel when going to trial in a criminal case." *Id.* at 132. Thus, when assessing whether a defendant "received that constitutionally guaranteed effective

assistance of counsel, we will look to what actually took place at [the defendant's] trial and not at what looked as if it might take place in the waning moments before trial began." *Id.* at 132-33. We concluded that because Garner never actually discharged defense counsel, the strictures of Rule 4-215 were not implicated. *Id.* at 134.

Applying the reasoning of *Garner* to the instant case, we hold that any failure by the circuit court in strictly adhering to the mandates of Rule 4-215 did not result in reversible error because, while appellant did indicate a desire to discharge counsel, he never actually followed through on this desire to any meaningful degree. Both at the hearing on April 26 and prior to trial on May 25, appellant ultimately reneged on his request to discharge counsel and instead permitted Ms. Zeit to represent him at trial. To be sure, the trial court did, at one point, grant appellant's request to "try the case by myself" and allowed him to be alone at the trial table. But this lasted a very brief period, during which the parties simply discussed proposed voir dire questions, which Ms. Zeit approved before they were asked. Importantly, Ms. Zeit remained in the courtroom the entire time and, upon resuming her position at the trial table prior to the venire being called into the courtroom, continued her representation of appellant as if nothing had happened. From that point forward, Ms. Zeit, like defense counsel in *Garner*, handled all aspects of appellant's defense. In short, Rule 4-215 was not implicated because appellant was never actually deprived of the assistance of counsel.

Assuming, *arguendo*, that the court was required to adhere to the strictures of Rule 4-215, any error alleged by appellant was not preserved for our review. When, as is the case here, a defendant claims that a court failed to conduct the appropriate inquiry into

whether his waiver of counsel was knowing and voluntary, if, at the time of the inquiry, the defendant is represented by counsel, a contemporaneous objection must be made else the issue is not preserved. *State v. Westray,* 444 Md. 672, 686-87 (2015). Here, appellant was represented by counsel both times the court conducted its inquiry into appellant's decision to discharge counsel. Even if we consider Ms. Zeit's brief departure from the trial table to be a "discharge," which we do not, this discharge occurred after the court's alleged failure to comply with Rule 4-215. Consequently, the issue is not preserved for our review.

Appellant maintains that the requirement of a contemporaneous objection, as outlined by the Court of Appeals in *Westray*, *supra*, was inapplicable in his case because: 1) appellant's waiver of counsel at trial "was only briefly discussed at one hearing on one day," whereas in *Westray* "the issue was discussed for so long;" 2) appellant's counsel was discharged "prior to the trial court even remotely offering any of the 4-215 advisories, leaving counsel no opportunity to object to that failure;" and 3) "there was no explicit cue to [appellant] or his counsel that the rule was not being complied with and that an objection would be proper."

We are not persuaded. First, appellant's waiver of counsel was discussed extensively, both at the April 26th hearing and prior to trial on May 25, with both the hearing court and the trial court engaging in a thorough discussion with appellant regarding his decision to discharge counsel and the various consequences of his actions. Moreover, the only time during any of the proceedings that appellant was without counsel was during the brief time *after* Ms. Zeit was "discharged," and even then Ms. Zeit remained in the courtroom. Thus, there were ample opportunities, either prior to her being "discharged" or

immediately after her being "reinstated," for Ms. Zeit to lodge an objection. That the court did not provide an "explicit cue" is irrelevant, as no such requirement can be found anywhere in the Maryland Rules or in the Court's opinion in *Westray*.

Finally, even if we were to conclude that the issue was properly preserved, we would hold that the circuit court did not err in performing its duties under Rule 4-215. "In addressing the circuit court's compliance with Md. Rule 4-215(e), we apply a *de novo* standard of review." *State v. Graves*, 447 Md. 230, 240 (2016). "We also adhere to the familiar principles of statutory interpretation." *Id.* Thus, when the plain meaning of a statute or rule is clear and unambiguous, we abide by that plain language. *Id.* If, on the other hand, the language is ambiguous, "we seek to discern the legislative intent from surrounding circumstances, such as legislative history, prior case law, and the purposes upon which the statutory framework was based." *Lewis v. State*, 348 Md. 648, 653 (1998).

As noted, appellant claims that, during his first waiver of counsel, the hearing court failed to "clearly explore" the issue of voluntariness, as required by Rule 4-215(a)(4) and Rule 4-215(b), and that the trial court, during his second waiver of counsel, failed to "correct" this error. Neither of appellant's claims is meritorious.

The record makes plain that the hearing court engaged in an exhaustive and intensive examination of appellant following his request to discharge counsel on April 26. In so doing, the court discussed a myriad of relevant issues, including the elements and potential penalties of each charge, the various functions of counsel, and the consequences of waiving counsel and proceeding *pro se*. Throughout the court's examination, appellant affirmatively recognized, in his own words, that he understood all the issues discussed. In

fact, the court's examination was so exhaustive that appellant voluntarily came to the realization that he did *not* want to waive his right to counsel but rather wanted to proceed to trial with Ms. Zeit as his attorney. In short, appellant's claim that the court failed to "clearly explore" the issue of voluntariness is wholly without merit.[3] And, because there was no error, appellant's claim that the trial court failed to correct the hearing court's error is also without merit.

Appellant also alleges that, even if the hearing court's waiver inquiry was sufficient, the trial court was required, under Md. Rule 4-215(e), to conduct a second inquiry and make its own determination as to whether appellant's waiver was knowing and voluntary. We do not agree. Rule 4-215(e) expressly states that a court need not conduct a waiver inquiry if the docket or file reflects prior compliance. *Id.; See also Westray*, 444 Md. at 687 ("Rule 4-215(e) did not require the court to repeat the litany required by subsections (a)(1) through (a)(4) at that hearing as there had been 'prior compliance' with that requirement[.]"). In addition, the Court of Appeals has held that Rule 4-215(a) advisements may be given piecemeal over the course of multiple circuit court appearances. *Broadwater v. State*, 401 Md. 175, 194-96 (2007) (discussing *Gregg v. State*, 377 Md. 515 (2003)). Thus, appellant's argument that a trial court must always conduct its own determination of voluntariness directly contradicts both the language of the Maryland Rules and prior caselaw.

[3] Appellant erroneously claims that, under *Westray v. State*, 444 Md. 672 (2015), a court "must 'clearly explore' the issue [of voluntariness] prior to counsel's discharge." *Westray* contains no such language.

II.

Appellant next claims that the trial court erred in permitting the State to question him about his criminal record, namely, that he received a probation before judgment in 2001 for resisting arrest. Appellant maintains that such "other crimes" evidence is presumptively inadmissible unless it has "special relevance." Appellant further maintains that, even if the other crimes evidence has special relevance, it cannot be admitted until the State shows, by clear and convincing evidence, that appellant was involved in the "other crime" and, upon such a showing, the court determines that the evidence's probative value outweighs the danger of undue prejudice. Appellant concludes that, because none of these steps were taken prior to the admission of the "other crimes" evidence, the trial court committed reversible error.

Appellant's claim is unpreserved. "It is well established that a party opposing the admission of evidence shall object at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." *Wimbish v. State*, 201 Md. App. 239, 260 (2011) (quotations and citations omitted). "Moreover, 'objections must be reasserted unless an objection is made to a continuing line of questions.'" *Id.* at 261 (quoting *Ware v. State*, 170 Md. App. 1, 19 (2006)). In other words, "to preserve an objection, a party must either 'object each time a question concerning the [matter is] posed or…request a continuing objection to the entire line of questioning.'" *Id.* (quoting *Brown v. State*, 90 Md. App .220, 225 (1992)).

Here, the State asked, and appellant responded to, three questions about his criminal record before any objection was lodged. Then, following defense counsel's sole objection,

the State resumed its questioning of appellant by asking him, for the first time, about his charge of resisting arrest. At no point was there any additional objection to this line of inquiry.

In regard to defense counsel's sole objection, what defense counsel objected to was, at best, ambiguous, and the trial court never issued a ruling on the objection. Thus, the record is devoid of any indication that the argument presented by appellant in the instant appeal was raised in or decided by the trial court, as required by Maryland Rule 8-131(a). *See Id.* ("Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). It would be unfair for this Court to hold that the trial court erred in failing to conduct the necessary balancing test when the court was never prompted to do so in the first place. Not only would such a holding be in direct conflict with Rule 8-131(a), but it would also require trial courts to make *sua sponte* decisions regarding the admissibility of evidence, which the Court of Appeals has, on at least one occasion, expressly held to be erroneous because, in doing so, the court "leaves its role as an arbiter and assumes another role as a party to the proceeding, placing into question the defendant's right to a fair trial." *Kelly v. State,* 392, Md. 511, 541 (2006).

In fact, the trial court's restraint in the instant case was particularly appropriate given that the evidence in question was not offered, as appellant suggests, as "inadmissible other crimes evidence." Maryland Rule 5-404(b) states that evidence of other crimes, wrongs, or acts "is not admissible to prove the character of a person **in order to show action in conformity therewith**." *Id.* (Emphasis added). Here, Rule 5-404(b) was not implicated

because the State did not offer the evidence to prove appellant's character in order to show action in conformity therewith; rather, the State offered the evidence in response to appellant's direct testimony, in which he claimed that he did not have "a criminal record." Under these circumstances, the more appropriate rule is Maryland Rule 5-404(a)(2)(A), which permits a defendant to offer evidence of his "pertinent trait of character." *Id.* If such evidence is admitted, the State may, as it did, "offer evidence to rebut it." *Id.*

Accordingly, and for all the reasons stated, appellant's claim that the trial court erred in allowing "other crimes" evidence is not preserved for our review.

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