

Circuit Court for Baltimore City
Case No. 116196001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2735

September Term, 2016

KEMO OWENS

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 29, 2017

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

A jury in the Circuit Court for Baltimore City convicted Kemo Owens, appellant, of robbery. The court sentenced him to a 25-year prison sentence, without the possibility of parole. Appellant’s sole contention on appeal is that the court failed to comply with Rule 4-215(e), in that the court did not allow him an opportunity to explain his reasons for wishing to discharge counsel. For the reasons stated below, we affirm.

FACTUAL BACKGROUND

Briefly recounted, around 10:00 P.M. on June 13, 2016, a masked man entered the 7/11 at 10 North Calvert Street in Baltimore. The man leapt over the counter and threatened the clerk with an object that the clerk perceived to be a knife. When the clerk opened the cash register, the robber took the whole drawer and fled the store.

Using Baltimore’s surveillance cameras, Kerry Councill tracked a male wearing a brown shirt and black pants from the 7/11.¹ The man, carrying the cash register drawer, ran north on North Calvert Street. He turned right onto East Lexington Street and then a quick left onto Davis Street. After a “few seconds,” Councill observed the same man, still carrying the cash register drawer, cross Saratoga Street, but the man had changed into a white shirt and black shorts. Around 10:05 P.M., Baltimore City Police Department Officer Christopher Long stopped appellant on East Pleasant Street, roughly five blocks from the 7/11. He was wearing a white shirt and black shorts and had \$341.00 in cash stuffed into his underwear “all haphazardly and disorganized.” Police searched the area

¹ Councill, a retired Baltimore City Police Department officer, works for Baltimore Citiwatch, the organization that monitors the city’s surveillance cameras.

and recovered a cash register drawer containing \$51.27, a brown shirt, and black pants.²

The jury convicted appellant as indicated above.

PROCEDURAL ISSUE

On the morning of the first day of trial, defense counsel informed the court that appellant wanted to address an issue, and the following ensued:

THE COURT: All right, this is unusual.

[DEFENSE COUNSEL]: I understand, Your Honor.

THE COURT: Okay. Mr. Owens, what do you want to say?

[APPELLANT]: Yes, ma'am. Ma'am, I would like to ask the Court today – **I would like to go on record and ask the Court today if you can excuse [defense counsel] to represent me in this trial. I am completely one hundred percent totally able to represent myself in this trial.** I've been – if you can give me one second, please.

THE COURT: Sure. I'll give you one second but I need to explain something before you continue.

[APPELLANT]: Okay.

THE COURT: But I'll give you another second.

[APPELLANT]: Yes, ma'am.

THE COURT: But let me explain to you. **You have an absolute right to fire [defense counsel]. I don't need to give you permission to fire him.**

[APPELLANT]: Okay.

THE COURT: What you need to understand if you fire [defense counsel] you will be your own lawyer.

² At trial, the State showed the jury photographs of the recovered evidence, as well as surveillance videos from the City's and 7/11's cameras.

[APPELLANT]: Okay, understood.

THE COURT: Because I am not going to postpone the case.

[APPELLANT]: Understood.

THE COURT: Now, do you know the rules of evidence?

[APPELLANT]: Yes. Well, ma'am, I have my elements that I will present to the court.

THE COURT: No, no, the rules of evidence.

[APPELLANT]: No, I don't.

THE COURT: Well, you see this is the reason that you have a lawyer.

[APPELLANT]: Yes, ma'am.

THE COURT: To help with you the presentation of evidence. **I would strongly recommend that you keep [defense counsel] as your lawyer.** You can advise him. I'll give you – [defense counsel] opportunities to consult with you during the trial so that you can advise him of what you think he should be doing.

[APPELLANT]: Okay.

THE COURT: And what he shouldn't be doing.

[APPELLANT]: Okay.

THE COURT: But I would highly recommend that you keep –

[APPELLANT]: **Thank you very much.**

THE COURT: [Defense counsel] is an excellent lawyer.

[APPELLANT]: **I'll take your advice.**

(Emphasis added).

Immediately after appellant heeded the court’s recommendation, however, defense counsel wished to be heard, leading to the following discussion:

[DEFENSE COUNSEL]: Your Honor, I just need to put one thing on the record. I’m not trying to dissuade anything. I think Mr. Owens is making the correct decision. However, strategy is the purview of the defense attorney. There are some issues that we’ve had –

THE COURT: You’ve had disagreements on?

[DEFENSE COUNSEL]: Yes, ma’am.

THE COURT: Let me ask you this, Mr. Owens.

[APPELLANT]: Yes, ma’am.

THE COURT: Now, I was a defense attorney for twenty years so. Well, I guess it couldn’t be twenty years because I’ve been a judge for twenty years so maybe ten years. There are two decisions that a defendant absolutely has a right to make. One is whether to elect a court trial or a jury trial and I understand you’ve elected a jury trial.

[APPELLANT]: Yes, ma’am.

THE COURT: The other is whether to testify or not to testify. Those are two decisions that only the defendant gets to make.

[APPELLANT]: Okay.

THE COURT: The rest of the decisions generally are made by the lawyer because it’s like when you get a doctor and you go into the hospital and you’re lying there and the doctor says we need to remove his left lung. They don’t discuss with you, okay, now do you think we should remove the left lung or do you think we should remove the right lung. They just do the job that they’re paid to do.

[APPELLANT]: Yes, ma’am.

THE COURT: So I would recommend that you listen carefully to [defense counsel]’s –

[APPELLANT]: Okay.

THE COURT: – instructions or his guidance. Other than those two issues whether you get a jury trial or whether you testify, you should be the man in charge.

[APPELLANT]: Okay. May I say one thing?

THE COURT: You certainly may ask. I'm not sure I can answer.

[APPELLANT]: I just want to say Your Honor what if I have evidence that shows, pressing evidence that I've asked my attorney to argue and he doesn't want to argue this evidence that I believe will exonerate me from this crime. I've been incarcerated for the past seven months, Your Honor, without a bail.

THE COURT: Well, all I can suggest –

[APPELLANT]: There is a lot of issues going on with this case, Your Honor.

THE COURT: I understand, Mr. Owens, but I don't know what those issues are.

[APPELLANT]: I understand.

THE COURT: And [defense counsel] does know what those issues are.

[APPELLANT]: Exactly. You don't understand – you're not aware of them.

THE COURT: I'm not allowed to be aware of them.

[APPELLANT]: Oh, okay.

THE COURT: Because I am supposed to just call balls and strikes.

[APPELLANT]: Yes, ma'am.

THE COURT: With regards to the rules of evidence.

[APPELLANT]: Understood.

THE COURT: But if you represent yourself I'm going to hold you to the same standard I would hold any lawyer to.

[APPELLANT]: Okay. So –

THE COURT: And the lawyers will tell you Judge Murdock knows the rules and she's going to follow the rules.

[APPELLANT]: And I understand that a hundred percent and that's why **I want to represent myself and present my own evidence. I'll take my chances to represent myself and present my own evidence.** Now, if he wants to advise me on certain things, cool. If not, I'm good with that. I'll take my chance.

THE COURT: I think you need to talk to [defense counsel] about the correct strategy.

[APPELLANT]: Your Honor, **I do not want to delay this trial.**

THE COURT: Oh, no, it's not going to delay.

[APPELLANT]: I'm ready.

THE COURT: You're going to be talking to him as it's going on.

[APPELLANT]: Okay, **I am ready for trial, I'm ready. Honestly he's not ready because he doesn't even know what's going on in my mind or what is – because he hasn't – he's been ineffective, Your Honor. So that's why I'm asking you to remove him from speaking on my behalf. I can speak on my own behalf.**

THE COURT: I don't have to remove him. I have explained to you.

[APPELLANT]: Okay.

THE COURT: **You can fire him.**

[APPELLANT]: Okay.

THE COURT: If that's what you want to do.

[APPELLANT]: Okay. Well he's fired.

THE COURT: If you want to fire him –

[APPELLANT]: Yes, ma'am.

THE COURT: You understand that he's going to leave this courtroom.

[APPELLANT]: Yes, ma'am.

THE COURT: And not be involved at all.

[APPELLANT]: Yes, ma'am, I understand.

THE COURT: And I'm going to hold you to the standards of the rules of evidence.

[APPELLANT]: Okay.

THE COURT: I won't – you may not be able to submit certain things to the Court because –

[APPELLANT]: Okay.

THE COURT: – because the rules provide that they're inadmissible.

[APPELLANT]: Okay. If you tell me that is inadmissible, I will – I understand, Your Honor. I'll take my chances.

THE COURT: That's why I would highly recommend that you keep [defense counsel] so that you can discuss is this going to be admissible, is that going to be admissible.

[APPELLANT]: Your Honor, I'm just here to prove my innocence and get home.

THE COURT: All I'm here to do is call balls and strikes.

(Emphasis added).

The court then inquired of appellant whether he knew how to pick a jury; he admitted that he did not. Appellant then consulted with defense counsel, and the court suggested that “we start with [defense counsel] and see how it goes.” Appellant agreed.

A short time later, after discussing *voir dire* questions and the State’s notification of a maximum mandatory penalty, the following occurred:

[APPELLANT]: **Your Honor, I’ve made a decision that I would like to represent myself. It’s as simple as that.**

THE COURT: **You’ve got to make it and you can’t be changing your mind Mr. Owens.**

[APPELLANT]: **I’m not changing it anymore** because there’s some questions that I need to ask. I will –

THE COURT: You need to ask who?

[APPELLANT]³: To his witnesses.

THE COURT: Okay. You understand that if the State objects and I sustain, that’s the end of it.

[APPELLANT]: Okay.

THE COURT: We don’t discuss it –

[APPELLANT]: Okay.

THE COURT: – in this court.

[APPELLANT]: Okay. I understand.

THE COURT: You sure you don’t want [defense counsel] to be with you?

³ At various points in this discussion, the transcript has a witness speaking, but, because there was no witness in the courtroom at this time, it appears the transcriptionist meant “the defendant.”

[APPELLANT]: No.

THE COURT: No, you're not sure.

[APPELLANT]: I am positive. I don't want him to be with me.

THE COURT: Okay. Let me make sure then that you – [court clerk], do you have a waiver?

(Emphasis added).

The court then questioned appellant as to his understanding of the proceedings and his request:

THE COURT: You understand what you're charged with?

[APPELLANT]: Yes, ma'am.

THE COURT: What are you charged with?

[APPELLANT]: I'm charged with robbery and I'm charged with assault and I'm charged with theft.

THE COURT: And you're charged with armed robbery?

[APPELLANT]: Yes, ma'am, armed robbery.

THE COURT: Armed robbery and robbery.

[APPELLANT]: Yes, ma'am.

THE COURT: And do you understand that?

[APPELLANT]: Yes, ma'am.

THE COURT: And you understand that the penalty for armed robbery is twenty years incarceration.

[APPELLANT]: Yes, ma'am.

THE COURT: And the penalty for robbery is fifteen years.

[APPELLANT]: Yes, ma'am.

THE COURT: The penalty for assault in the second degree is ten years and a fine of \$2,500. Don't say anything and the penalty for theft in this case is 18 months and a fine of \$500.00; do you understand that?

[APPELLANT]: Yes.

THE COURT: Okay. Now, do you understand that?

[APPELLANT]: Yes.

THE COURT: Now, do you understand you have a right to be represented by counsel?

[APPELLANT]: Yes, ma'am.

THE COURT: And do you understand that counsel can render important assistance to you as we've gone over. [Defense counsel] is a very experienced lawyer and he can advise you as to what can come in and what can't come in. You understand his role in this case?

[APPELLANT]: Yes, ma'am.

THE COURT: All right. Even if you decide to plead guilty [defense counsel] could help persuade me to give you less of a sentence than the maximum sentences; do you understand that?

[APPELLANT]: Yes, ma'am.

THE COURT: All right, now, if you can't afford a lawyer, you can apply for the services of the Public Defender which you have done. [Defense counsel] works for the Public Defender's Office and they have appointed him to represent you. Do you understand that?

[APPELLANT]: Yes, ma'am.

THE COURT: And you understand that if you go to trial without a lawyer I'm going to hold you to the same standards as I would hold any lawyer?

[APPELLANT]: Yes, ma'am.

THE COURT: And you wish to fire [defense counsel]?

[APPELLANT]: Yes.

THE COURT: All right, I think you're making a mistake, a serious mistake, but as I said it's not up to me. It's up to you. **Now, one thing I do want you to understand is that you can't change your mind –**

[APPELLANT]: Okay.

THE COURT: – **in the middle of the case. Once we start you've made your election, do you understand?**

[APPELLANT]: Yes, ma'am.

THE COURT: Any questions you have for the Court?

[APPELLANT]: Well, I just want to know that there are certain questions that I can present to, you know.

THE COURT: You can't present any questions. Have you talked to [defense counsel] and suggested –

[APPELLANT]: That's what – **he hasn't been available for me to present my case. I haven't had any time with him.**

THE COURT: Mr. Owens, write your questions down and give them to [defense counsel] to ask. Here's a pad. That way you'll have a lawyer.

[APPELLANT]: Okay, okay.

THE COURT: Write them down.

[APPELLANT]: **I see the sensitivity that you're stressing about having him as a lawyer and I'm going to take your advice on this.**

THE COURT: **All right, now, you can't change your mind.**

[APPELLANT]: **I'm not going to change my mind anymore.**

(Emphasis added).

Appellant did not change his mind anymore, and the trial proceeded with counsel representing him.

DISCUSSION

Rule 4-215(e) provides, in part, that when a defendant requests to discharge counsel, “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 date, then the defendant may be unrepresented. *Id.* If the court determines that there is not a meritorious reason, however, “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.” *Id.* The rule also requires the court to comply with subsection (a)(1)-(4) prior to discharging counsel. *Id.*⁴

Appellant contends that the court did not permit him to explain his reasons for wanting to discharge his counsel. He maintains that the court continuously interrupted him and never made a finding as to whether his reasons were meritorious or not. He characterizes the court’s conduct as a “blatant” violation of Rule 4-215(e).

⁴ These subsections require the court to conduct an inquiry with the defendant and ascertain that the defendant is aware of the right to counsel and the importance of counsel, as well as to advise the defendant of the nature of the charges and penalties. Rule 4-215(a)(1)-(4).

We disagree, primarily because appellant repeatedly withdrew his request to discharge counsel. When appellant initially asked the court for permission to discharge counsel, the court informed him that he had an “absolute right” to fire his counsel. After further discussion, appellant thanked the court and took the court’s advice to retain his counsel. Later, the court reminded appellant of his right to discharge counsel, but, after consultation with defense counsel, appellant agreed with the court’s suggestion of starting trial with counsel and “see[ing] how it goes.” After discussing *voir dire* questions, appellant firmly made a request to discharge counsel, and the court admonished appellant that he could not later change his mind. Appellant then reconsidered: “I see the sensitivity that you’re stressing about having him as a lawyer and I’m going to take your advice on this.” Appellant then said he would not change his mind again.

Accordingly, appellant withdrew his request to discharge counsel, and the issue of the court’s compliance with Rule 4-215(e) is not properly before us. *See Carroll v. State*, 202 Md. App. 487, 513 (2011) (holding that Carroll’s argument as to motion to suppress a taped confession was not preserved where motion was withdrawn), *aff’d*, 428 Md. 679 (2012).

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