Circuit Court for Prince George's County
Case No. CT 190054X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1765

September Term, 2019

DUNALT SANDOR KING

v.

STATE OF MARYLAND

Graeff,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: December 10, 2020

A jury in the Circuit Court for Prince George's County convicted appellant, Dunalt King of resisting arrest, disorderly conduct, and failing to obey a reasonable and lawful order of a police officer.[1] The court sentenced Mr. King to three years for resisting arrest, suspending all but 140 days, with credit for 133 days' time served, followed by a 3-year term of supervised probation. The remaining convictions were merged for sentencing purposes. On appeal, Mr. King poses two questions, which we rephrase slightly:

> I. Did the circuit court comply with Rule 4-215(a)(1) when it found that Mr. King had waived his right to counsel?
>
> II. Did the trial court commit plain error by presiding over the trial while Mr. King was dressed in prison clothing?

For the following reasons, we answer the first question in the affirmative and the second question in the negative and, therefore, affirm.

BACKGROUND

The charges against Dunalt King arose from events that occurred in the Circuit Court for Prince George's County on September 24, 2018. On that day, Mr. King arrived for a court proceeding related to traffic citation issued to him by Prince George's County Police Officer James Niederer in January 2018. When his case was called, Mr. King

[1] Mr. King was acquitted of one count of second-degree assault and one count of second-degree assault on a law enforcement officer. The jurors were unable to reach a verdict as to another count of second-degree assault and one count of reckless endangerment. The State later entered a *nolle prosequi* on the two counts upon which no verdict was reached.

refused to identify himself and the presiding judge issued a forthwith body attachment. Corporal Edward Womack, a Prince George's County sheriff's deputy, and Officer Niederer followed Mr. King into the vestibule outside the courtroom and attempted to arrest him. Officer Niederer testified that Mr. King strangled him and threw him to the ground. Deputy Womack testified that when he went to Officer Niederer's aid, Mr. King elbowed him in the eye and swung his backpack, hitting the deputy on the side of his head. As a result, Deputy Womack testified that he sustained a mild concussion.

Mr. King was arrested and charged in the District Court of Maryland with two counts of second-degree assault (Deputy Womack and Officer Niederer); second-degree assault on a law enforcement officer engaged in the performance of his official duties (Deputy Womack); reckless endangerment (Officer Niederer); resisting arrest; disorderly conduct; and failure to obey a lawful order. He ultimately was released on pretrial supervision.

On January 15, 2019, the State filed a criminal information in the Circuit Court for Prince George's County and issued a summons for Mr. King's initial appearance, then scheduled for February 1, 2019. An attorney from the Office of the Public Defender entered his appearance on Mr. King's behalf on January 30, 2019. On February 6, 2019, his case was reassigned to a panel attorney.

On March 11, 2019, the circuit court revoked Mr. King's personal recognizance and issued a bench warrant because he had failed to comply with the conditions of his pretrial supervision order. Mr. King was arrested on that warrant on June 5, 2019 and

was arraigned that same day. His attorney did not appear for arraignment.[2] The court advised Mr. King of the charges against him, the maximum penalties for those crimes, and informed him that he was scheduled for a motions hearing on July 12, 2019 and for trial on July 23, 2019.

On July 12, 2019, Mr. King appeared with his assigned counsel for the scheduled motions hearing, but by then the trial date had been postponed until September 18, 2019. Defense counsel advised the court that he and Mr. King had "some disagreement as to representation and what that looks like in the State of Maryland" and that his client wanted "to be referred to another attorney." The court inquired of Mr. King and ultimately struck counsel's appearance. The court advised Mr. King that he was now scheduled for a motions hearing on September 13, 2019, and trial on September 18, 2019.

On the morning of September 13, 2019, Mr. King appeared without counsel before the criminal division coordinating judge. The judge questioned whether Mr. King wished to hire an attorney or represent himself. Mr. King refused to answer those questions. The judge advised Mr. King as to the charges against him, the maximum penalties associated with each charge, urged him to hire an attorney, and advised him about the services an attorney could provide to him. He then transferred Mr. King's case to another courtroom for argument on motions.

[2] The circuit court asked an attorney from the Office of the Public Defender who was present in the courtroom for another case to assist Mr. King during his arraignment and bond review, but that attorney advised the court that she has spoken to Mr. King and he was not interested in her services.

Later that morning, Mr. King appeared before another circuit court judge for his motions hearing. The judge noted that the appearance of Mr. King's assigned counsel had been stricken in July and asked him if he had a lawyer or if he wished to represent himself. After some discussion on the record, the court asked Mr. King if he knew "the charges that are pending in this case[?]" Mr. King replied, "Can you help me out with the charges?" The trial judge proceeded to readvise Mr. King about the charges against him, and the maximum penalties associated with each charge were disclosed to Mr. King. The court also readvised him about the services an attorney could provide him. The court asked Mr. King again if he wanted to represent himself and Mr. King replied that he was "open to moving forward but the representation is not needed." The court questioned Mr. King about his age, his ability to read and write, whether he was under the influence of drugs or alcohol. The court then found that Mr. King was "an intelligent and educated and sober individual" and that he "knowingly and voluntarily has chosen to go forward without the assistance of . . . a lawyer." The court then heard argument on Mr. King's oral motions and denied them.

Mr. King represented himself at his jury trial on September 18-19, 2019. The jury acquitted him of the assault charges relative to Deputy Womack; failed to reach a verdict on the assault and reckless endangerment charges relative to Officer Niederer; and convicted him of the three lesser charges of resisting arrest, disorderly conduct, and failure to obey a lawful order. This timely appeal followed. We will include additional facts in our discussion of the issues.

DISCUSSION

I.

Compliance with Rule 4-215

Mr. King asserts that reversal is required because the trial court did not comply with Md. Rule 4-215(a)(1) at the September 13, 2019 hearing, or before, by ascertaining whether he had received a copy of the criminal information. The State responds that because "the record supports a strong inference" that Mr. King had received a copy of the criminal information, compliance with subsection (a)(1) is immaterial.

Maryland Rule 4-215 governs waiver of counsel in a criminal case. At subsection (a) is the information that must be provided to a criminal defendant who appears in court without counsel, or who chooses to discharge his or her attorney. Pertinent here, subsection (a)(1) requires that the circuit court "[m]ake certain that the defendant has received a copy of the charging document containing notice as to the right to counsel."

Appellate review of compliance with subsection (a)(1) of Rule 4-215 is markedly different from review of compliance with subsections (a)(2)-(4) of the Rule. *Randolph v. State*, 193 Md. App. 122, 135-39 (2010). Whereas subsections (a)(2)-(4) require that the trial court impart specific information to the defendant, subsection (a)(1) requires only that the trial judge have information indicating that the defendant received a copy of his or her charging document(s). *See Muhammad v. State*, 177 Md. App. 188, 248 (2007) (explaining "the fundamental difference, in terms of essential character, between subsection (a)(1), which concerns the happening of an event, and most of the other

provisions of Rule 4-215, which involve the actual and direct imparting of specific information by the judge to the defendant"); *see also Broadwater*, 171 Md. App. at 320 (stating that: "[t]he recipient of the information pursuant to (a)(1) is the court itself"). Consequently,

> the satisfaction of subsection (a)(1) does not require a judge to make inquiry of, or say anything to, a defendant in a courtroom. If evidence objectively establishes that the defendant actually received a copy of the charging document . . . the fact that the judge failed to "make certain" of that fact is immaterial.

Muhammad, 177 Md. App. at 250 (citing *Fowlkes v. State*, 311 Md. 586 (1988)).

Mr. King's case file shows that he was charged in the circuit court by criminal information on January 15, 2019. A summons and a copy of the criminal information were mailed to him at his home address two days later, but the envelope and its contents were returned to the court unopened on February 13, 2019 with the handwritten notation, "Return to Sender. No Contact! No Contact!" on the envelope. The "Initial Appearance Report" from June 5, 2019, when Mr. King ultimately was arraigned and appeared without counsel, does not reflect that he was provided with a copy of the criminal information. He also was not provided with that document on July 12, 2019, when the appearance of Mr. King's assigned counsel was stricken. The record does not otherwise reflect if defense counsel had provided Mr. King with a copy of the criminal information.

We agree with the State, however, that the record establishes that Mr. King received a copy of the criminal information no later than September 13, 2019, the date on which he was found to have waived his right to counsel. On September 6, 2019, the State

filed a "Line" in the circuit court and attached a copy of a letter from the assistant state's attorney prosecuting the case to Mr. King. The letter advised that the State was hand-delivering 231 pages of paper discovery to Mr. King that same day at the Prince George's County Correctional Facility. A week later, on September 13, 2019, at the hearing where the court found that Mr. King had waived his right to counsel, the assistant state's attorney provided that same discovery package directly to Mr. King. Later during that hearing, when Mr. King was arguing pretrial motions, the court also gave him an opportunity review the case file, including the charging document.

Five days after that hearing, Mr. King represented himself at his two-day jury trial. On the second day of trial, while Mr. King was cross-examining a State's witness, he moved to admit the statement of charges filed in the District Court of Maryland, which he stated had been supplied to him by "the opposition" in "the discovery package." Later that day, he introduced into evidence a copy of the criminal information as his Exhibit 5. The copy of the statement of charges, the criminal information, and other exhibits Mr. King moved to introduce during his trial, all bear hand-written Bates numbers on them. It is evident from the above facts that Mr. King received the criminal information in the discovery package, either when it was hand-delivered to the jail where Mr. King was detained on September 6, 2019 or when it was provided to him at the September 13, 2019 hearing. Given that there is actual evidence that Mr. King received a copy of the criminal information, no further inquiry is required to conclude that the circuit court complied with the requirements of Maryland Rule 4-215(a)(1).

II.

At his trial, Mr. King was clad in an orange jumpsuit. On appeal, he maintains that it was error for the trial court to permit him to be tried in his jail clothing. Recognizing that he lodged no objection below, he asks this Court to exercise plain error review. For the following reasons, we decline to do so.

"Plain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors by a trial court which 'vitally affect[ ] a defendant's right to a fair and impartial trial.'" *Malaska v. State*, 216 Md. App. 492, 524 (2014) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)). It "is a discretion that appellate courts should rarely exercise[.]" *Chaney v. State*, 397 Md. 460, 468 (2007). It is available, at the discretion of an appellate court, if four elements are satisfied: (1) "'there must be an error or defect – some sort of deviation from a legal rule – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant'"; (2) "'the legal error must be clear or obvious, rather than subject to reasonable dispute'"; (3) "'the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings'"; and (4) the error must "'seriously affect[ ] the fairness, integrity or public reputation of judicial proceedings.'" *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)) (additional citations, quotation marks, and alteration omitted).

Mr. King, citing *Estelle v. Williams*, 425 U.S. 501 (1976), contends that being tried in "identifiable prison garb" was a "fundamental error affecting the right to a fair trial." He emphasizes that two witnesses identified him at trial by reference to his orange jumpsuit, conveying to the jurors that he was in custody and infringing upon his right to the presumption of innocence, due process, and a fair trial.

The State responds that Mr. King has failed to satisfy the third prong of the plain error test both because he was acquitted on three counts and the jurors failed to reach a verdict on two other counts undermines any argument that he was prejudiced by being tried in his prison garb and because the record suggests that Mr. King "wanted to go to trial in prison clothes in order to make himself more sympathetic to the jury."

In *Estelle*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibited the states from "compel[ling] an accused to stand trial before a jury while dressed in identifiable prison clothes," but reasoned that "the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." 425 U.S. at 512-13. The Court recognized that "the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." *Id*. at 504-05. Nevertheless, "the particular evil proscribed is compelling a defendant, against his will, to be tried in jail attire." *Id*. at 507. This was so because there were many "instances . . . where a defendant prefers to stand trial before his peers in prison garments." *Id*. at 508.

The Court of Appeals applied the holding in *Estelle* in *Knott v. State*, 349 Md. 277 (1998). There, because the defendant voiced an objection to appearing before the jury in his prison attire after the case was called, but before *voir dire*, "the element of compulsion" was present. *Id*. at 288. Consequently, the Court held that the circuit court's inaction in the face of that objection violated the defendant's rights under the Fourteenth Amendment. *Id*.

In the trial below, Mr. King did not object to being tried in his prison jumpsuit and, thus, consistent with *Estelle* and *Knott*, was not compelled to appear in his prison attire. During closing argument, Mr. King argued that he was being victimized and persecuted by the criminal justice system. He emphasized to the jurors that he was "still confined for this matter. I'm still confined for this matter." Because Mr. King strategically chose to advertise to the jury that he was detained pretrial and because the jury issued a split verdict in which it acquitted or failed to reach a verdict on the most serious charges, we are not persuaded that any error by the trial court in not giving Mr. King the opportunity to wear non-prison attire at trial "affected the outcome of the [trial] court proceedings." For this reason, plain error review is not warranted.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.