Circuit Court for Baltimore City
Case Nos. 120181016 – 17, 119331025

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1584

September Term, 2021

DONNELL RAY

v.

STATE OF MARYLAND

Reed,
Albright,
Salmon, James. P.,
Senior Judge, Specially Assigned,

JJ.

Opinion by Salmon, J.

Filed: October 13, 2022

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The parties to this appeal are Donnell Ray ("appellant") and the State of Maryland ("appellee"). The issue that separates the parties requires us to interpret and apply the first sentence of Maryland Rule 4-215(e). Rule 4-215(e) reads, in its entirety, as follows:

> 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 claims that certain statements he made at a pretrial motions hearing were sufficient to convey to the motions judge his desire to discharge counsel and therefore, because the motions judge did not make the inquiries required under Rule 4-215(e), he is entitled to have his three armed robbery convictions vacated and a new trial granted. The State maintains that nothing appellant said at the pretrial hearing indicated that he had the present intent to discharge counsel and therefore the provisions of Maryland Rule 4-215(e) were inapplicable.

I.

BACKGROUND

In a twenty-four hour period between November 3 and November 4, 2019, three robberies were committed in Baltimore City on or near the campus of the University of

Maryland where the medical school and other professional schools are located. All three victims told the investigating police officer that the person who robbed them was a black man brandishing a knife. Two of the three victims said that the knife used had a gold handle and blade. All three victims picked appellant's picture out of a photographic array as the person who had robbed them.

Shortly after the third robbery, a police officer stopped appellant because he matched the description of the robber. He was searched prior to being arrested and placed in a police transport vehicle. No weapons were found on him when he was initially searched. But, according to the later testimony of the police officer who transported appellant, during the trip to the police station the officer heard something drop in the back seat of the vehicle where appellant was located. Appellant was removed from the police vehicle and when the officer looked on the backseat floor, he observed a knife with a gold handle and blade. That knife matched the description of the weapon given by two of the three victims of the robberies.

Appellant was charged in the Circuit Court for Baltimore City in three separate indictments for, *inter alia*, the armed robberies just mentioned. On May 19, 2021, a hearing was held concerning the State's motion to join the three cases for trial. After a hearing before the Honorable Philip Jackson, the State's motion to join the cases was granted. What transpired at the hearing, insofar as here pertinent, will be discussed in part II, *infra*.

On August 27, 2021, after a two-day trial presided over by the Honorable Jennifer Schiffer, appellant was convicted by a jury of three counts of armed robbery but acquitted of three counts of openly carrying a deadly weapon with the intent to injure. He was also acquitted of one count of conspiracy to commit an armed robbery. Appellant was sentenced to 15 years (consecutive) for each armed robbery conviction.[1] Appellant noted this timely appeal in which he raises one question: Did the [motions judge] comply with Maryland Rule 4-215?

II.

THE HEARING ON THE MOTION TO CONSOLIDATE

At the joinder hearing, no testimony or exhibits were introduced. Instead, the State made a proffer of the evidence it intended to prove. Defense counsel also made a brief proffer.

Counsel and the court all agreed that the case of *Conyers v. State*, 345 Md. 525 (1997), set forth the relevant rules to be utilized by a motions judge when deciding whether to grant a joinder motion. In *Conyers*, 345 Md. at 553, the Court said:

> [T]he analysis of jury trial joinder issues may be reduced to a test that encompasses two questions: (1) is evidence concerning the offenses or defendants, mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must apply

[1] Because of appellant's prior criminal record, all three sentences imposed were within the guidelines set forth by the Maryland Sentencing Guidelines Commission.

> the first step of the "other crimes" analysis announced in [*State v.*] *Faulkner*, [314 Md. 630 (1989)]. If question number one is answered in the negative, then there is no need to address question number two[.]

(Citations omitted.)

At the joinder hearing in the case *sub judice*, the prosecutor made the following proffer:

> [All three crimes occurred] on essentially the same property. They have been in the same manner . . . and the [d]efendant is alleged to have committed all three acts within that 24-hour period.
>
> The first one with regards to Case A, that is alleged to have happened on November 3rd at approximately 6:30 p.m. at the 600 block of West Fayette Street which is on University of Maryland's School of Medicine property. The second one was approximately 12 or 13 hours later on November 4th at around 8:00 a.m. also on the 600 block of West Fayette. And the third was November 4th at approximately 6:00 p.m. at the 700 block of Pratt Street, which is approximately a block away from the first two locations.
>
> These incidents happened in the same areas. They happened, all the descriptions that were given by the witnesses or the victims described a gentleman who was African American, who used a gold knife to conduct these armed robberies, as well as similar descriptions given of the victim [sic].
>
> Your Honor, descriptions were given in Cases A and B. However, no one was arrested at that juncture. Case C is very important to the prosecution of all three of these cases because it was in Case C that the [d]efendant was actually arrested. Shortly thereafter[,] he was arrested and apprehended and the gold knife was recovered.
>
> Due to the similarities in all three cases, the arrest that was made in Case C was used in order to propel the investigations for Cases A and B. Photo arrays were conducted based on the arrest that was made in Case C. And the victims in both Case A and Case B were able to positively identify this [d]efendant, Mr. Ray as the assailant that they described previously to the police, just 24 hours prior to his arrest due to the third case.

> As well as . . . the similarity in which each crime, excuse me, was conducted, it was a knife that was pointed at the three different, the three victims. Threats were made and money or tangible objects were requested and were taken by the [d]efendant.
>
> All three of these people were either employees or students of the University of Maryland School of Medicine. It is evident from the evidence that will be presented at trial that this was, this was kind of the plan all along that the [d]efendant would keep returning to this property and keep finding other people to be victims to these crimes that he intended on committing.

Appellant's trial counsel, made a counter-proffer in which she said that the complaining victim in Case B "described her assailant as in his 20's." She also made the following argument:

> Well, starting off with identity. In Case A ending in 017, the complaining witness id(s) her assailant as a black male, 5'5, early forties, bald hair, black jacket with a brown shirt. Brandished a knife with approximately a two inch blade and a gold handle to the knife.
>
> The Case B ending in 016, the complaining witness identified her assailant as an unknown black male, heavy build, no facial hair, about 5'10 - - significant difference, dark colored knitted hat, dark colored coat, brandished a gold knife with the blade three to five inches. I would say significant.
>
> In Case C, the complaining witness, that case ending in 025[,] said his assailant was an unknown black male about 200 pounds, 5'8, black coat with a flower like pattern on both sleeves. Produced a knife.
>
> The, so the, all three identities are, I would say significantly different. But each case can stand alone. There was an identity, a photo array done in each case. How - - the facts of the robbery are pretty commonplace with the use of a knife. There was nothing, a knife in most robberies is brandished. It wasn't held in a significant, other than a brandishing knife to rob people. The - - and because there is a photo array in each case, that's why they can stand alone. If there was only one robbery, how he got arrested later on is not of any . . . significance. . . .

After further argument by both appellant's counsel and the prosecutor, Judge Jackson noted that appellant had raised his hand. He then asked counsel whether she would like to confer with her client "before he says anything on the record. . . ." The following then transpired:

> [COUNSEL]: Thank you.
>
> [APPELLANT]: I'd like to - -
>
> [COUNSEL]: Wait, wait.
>
> [APPELLANT]: Can I say something?
>
> THE COURT: Well, you should consult with your attorney before you say anything.

(Pause in the proceedings).

> [COUNSEL]: Thank you, Your Honor.
>
> THE COURT: Thank you. Is there anything further that your client wishes - -
>
> [COUNSEL]: No. It's just to point out in *McKnight* [*v. State*, 280 Md. 604 (1987)], that the four robberies were not so identical and it was not such a handy work and I would argue that this, the knife used in this case even though only two out of the three identified it as a gold knife is not that unique that Mr. Ray should be prejudiced by all three being tried together. Each case can stand alone.

At the conclusion of the hearing, after the motions judge granted the State's motion for joinder, the following exchange took place.

> [APPELLANT]: Excuse me, judge. Is it any[]way that I can get this trial reheard?
>
> THE COURT: I'm sorry.

> [APPELLANT]: Is there any, is there any way I can get this trial reheard?
>
> THE COURT: This hearing reheard?
>
> [APPELLANT]: **Yes. Because actually I have unofficial counsel. This is actually, what I'm saying, I need to speak myself obviously to see, to take forth and make her understand, make you understand that you see the points that I would like to argue.**
>
> THE COURT: Well, there can always, there can always be a motion for reconsideration filed. But you, again, should consult with your attorney. She is a very practiced counsel.

The portion emphasized in the above exchange is one of the statements that appellant now claims should have alerted Judge Jackson to the fact that he had, at that time, a present intent to discharge his attorney. In this opinion, the emphasized portion will be referred to as "comment one."

Next, appellant put on the record a lengthy criticism of the motions judge and of the prosecutor. In that regard, the following colloquy is relevant:

> [APPELLANT]: What I'm saying, what I'm saying, sir - - I mean, this is my life. You feel me. You're not talking to me. What I'm saying is, you talking to them. You displaying action talking to them. But she [the prosecutor], actually mentioned things that's not correct on this paper. Like this, it's, it's, it's[,] it's uncorrect that she has mentioned, she mentioned things that if you would read - -
>
> * * *
>
> [APPELLANT]: So what I'm saying is she mentioned things that's uncorrect inside of these cases. What I'm saying is - -
>
> THE COURT: Who is she?
>
> [APPELLANT]: The State's Attorney.
>
> THE COURT: Okay.

[APPELLANT]: Excuse me, ma'am. Let me address you as she.

THE COURT: No. I just didn't know. We have several she(s) here. I didn't know to whom you were referring. That's all.

[APPELLANT]: So what I'm saying is you spoke your language and you spoke your language to them. And this, this is about my case to me. So what I'm saying is you never really talked to me. You talked directly to them. So, that left me not, that left me in the blind of not understanding.

What I'm saying is when I'm in the blind, I'm not understanding. After you display and talked to them, I didn't even understand your judgment because you speaking in Class A, and Class B, and Class C, which I don't know any of those Class A and Class B. So that's unofficial character.

What I'm saying is, I don't know nothing that you spoke, to speaking. So what I'm saying is, she [the prosecutor] sit there and say several times things that's incorrect and she spoke evidence as far as going into the case. How she speak of going into the case, going into an argument of three cases that's being emerged, to being consolidated and she, and she, the first case, the man didn't even mention the color of the knife. How did three cases that she mentioned had a color of a gold knife and the other case, they didn't even mention the color of the knife. How can you consolidate that and send that - - you can just say that a person can do two cases, two robberies, and he didn't do that robbery, but he got caught for the knife, and then you said he got caught for the knife, which is then the suspect is me and I didn't get caught with the knife. The knife wasn't in my person. The knife was anywhere.

So what I'm saying is she [the prosecutor] spoke things and said, that is not true and the facts of the motions that is untrue. And that was allowed to go forth and you agreed and you took us on, which you said you know of the case. Obviously, you know of the case. Did you read the motions? Did you read the motions yourself that was given?

THE COURT: Yeah.

[APPELLANT]: And looked at it yourself and you agree amongst those consolidating these cases - - and you mean to tell me those cases are supposed to be merged. No. They're not supposed to be a consolidate,

they're not supposed to be consolidated. They are, they are different cases. There is no way, sir, that you can actually say those two cases, those three cases could be consolidated if you checked the evidence that was displayed in all those cases.

THE COURT: Well sir, I don't mean to cut you off. But we really do need to get you transported. Your remedy if you so wish to do something contrary to what's happened here today is ask for a motion for reconsideration. That should come through your attorney. That's what they're here for. That's why I address [the prosecutor] - -[.]

[APPELLANT]: Oh, you didn't answer that question.

* * *

THE COURT: And [counsel] directly because, especially, [counsel] represents you. She is the vehicle through which I communicate when I - - in [c]ourt and through which you communicate. If you're dissatisfied with her representations here, or with what the State has represented, there was no argument about what was, the facts that were represented by the State in this - -

[APPELLANT]: It definitely was.

THE COURT: - - and if that is something that is incorrect, then you should file through [counsel] a motion for reconsideration and it can be held prior to trial. It should be held well prior to trial and we can go from there. But I am not, that's why I asked at the outset. Here's the facts that have been presented to me, the proffer as we call it that has been presented to me. Is there anything substantially different from the defense point of view. You're telling me, yeah, there is substantially different evidence that needs to be considered by me. But I didn't hear that from [counsel] except for one little bit about the age of the alleged assailant.

So with that being said, your remedy if you so desire to do this is confer with [counsel] and ask her to file a motion for reconsideration based on whatever facts you have, whatever evidence you believe that is contrary to what's been presented by the State. Okay?

Next, appellant and the motions judge engaged in an exchange that included the emphasized portion that we shall refer to as "comment two," which appellant claims contains language that adequately expressed his desire to discharge his trial counsel.

> [APPELLANT]: Yeah, okay. So I understand what you said totally. You said remedy of seeking, you said I can ask for a new remedy and new – **cause it was unofficial counsel. You see unofficial counsel. I actually stopped her and asked her. I said, hold on, ma'am. I need you to speak these things. I told her that.**
>
> THE COURT: Well, that's okay.
>
> [APPELLANT]: I told her that.
>
> THE COURT: But this –
>
> [APPELLANT]: Sir, so you basically sit right here and hold a conference, hold things and talk without my understanding. Unofficial counsel. When I directly said, I asked you to hold on and I asked her, can I speak myself. She told me, no. So what I'm saying is, she representing, true. But at the same time, if I write things on this paper and I know that she addressed things and you constantly addressing things, ma'am, and I say, they are not true that she's sitting there saying that three actually – the three actually incidents, crimes, convictions, that they're trying to convict me of was mentioned with a gold knife. The first incident was not stated with anything with a gold knife. The gold knife was found due to my arrest. That don't mean it had anything to do with the charge.
>
> THE COURT: Sir—
>
> [APPELLANT]: Just cause a gold knife was found on that, just that crime scene don't mean that it had anything to do prior to, prior to the incidents that actually – you right.
>
> THE COURT: And that—
>
> [APPELLANT]: You answered my question, sir. Can I file, is there any way because of official capacity, is there any type of way that I can file for this hearing to be reheard?

> THE COURT: That's what I told you. A motion for reconsideration would allow you to perhaps get a rehearing on this depending on what is the motion, what's contained in the motion, and whether I feel that argument further needs to be pursued. But you should consult with [counsel], who I will again say is a very practiced, very experienced, very highly competent representative for defendants in criminal matters in front of this [c]ircuit [c]ourt. But you do what you think is best for you.

Appellant's reply to the last statement made by the judge is quoted below. In this opinion, we shall refer to that response as "comment three."

> [APPELLANT]: There's no way, sir. **That's bullcrap. You sat right there, and just let her just talk, and ain't say nothing. I wrote things on that paper and you sitting there telling me that you, that you agree with that. This is bullshit, man. Unofficial counsel, man.**[2]

III.

THE TRIAL

When appellant's trial began about three months after the joinder hearing, appellant sat through the *voir dire* proceeding and gave no indication that he was dissatisfied with his counsel's representation.

The second witness called by the State at trial was the victim in what was referred to in the State's proffer as Case B. She testified in accordance with the proffer made by the prosecutor. She also testified that shortly after she was robbed, she gave a statement to a police officer that was recorded on the officer's body camera; later she also gave a written statement to the police.

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[2] Appellant never filed a motion to reconsider the grant of the State's joinder motion.

She testified that the police stopped a suspect shortly after she made a report of the robbery to the police. The officer brought the suspect to her and asked if he was her assailant. She replied that he was not. She was also shown two photo arrays, the first one did not have appellant's picture in it and she told the police officer that her assailant's picture was not in the array. The second photo array did contain appellant's picture and she identified appellant's picture as that of the person who had robbed her. After she finished her testimony, the following occurred:

> [APPELLANT]: Is there any way this case don't seem fair. Like I don't—like right now—
>
> THE COURT: I can't hear you.
>
> [APPELLANT]: Like right now, this is not going right, you know what I mean? Like I'm talking about like as far as everything is going good, but it's not giving me a fair trial right now. I think its unofficial counsel.
>
> THE COURT: You think what?
>
> [APPELLANT]: Unofficial counsel.
>
> [COUNSEL]: I think he's trying to say inefficient counsel.
>
> [APPELLANT]: Inefficient counsel. What I mean is, she is not pursuing, she is not doing things that she, she pulls, and she not breaking it down to me. And this is what I'm saying, I like her. She a nice woman. She a nice woman.
>
> THE COURT: You're trying to make a claim of ineffective assistance of counsel?
>
> [APPELLANT]: Yeah.
>
> THE COURT: I want you to tell me your exact complaints about [your counsel.]

> [APPELLANT]: She, the lady on the stand, [victim Case B]. I gave, she said, she said, she wrote, I actually have proof inside myself that this lady said, she said 99%, she picked somebody else out of the lineup. I got the papers. She give me another packet last week and she ain't even got the information, the same information in the packet. Like she's trying to work off of her like she's setting me up. So what I'm saying is, this same packet, the packet I got before, I got the same packet in my cell with some different information in it.

The trial judge denied appellant's request to discharge counsel.

After his request was denied, Mr. Ray testified that on the evening of November 4, 2019, he was hospitalized for a drug overdose caused by his taking heroin laced with fentanyl. He left the hospital against medical advice. Soon thereafter, he was stopped and arrested by a police officer. The officers searched him (with the exception of not placing their hands inside of his pants to conduct a further search) and did not recover anything related to this case. Mr. Ray denied robbing any of the three alleged victims. He also denied ever possessing a knife on the dates of the robberies.

IV.

DISCUSSION

The Maryland Court of Appeals has given a very broad interpretation of what constitutes a request to discharge counsel within the meaning of the first sentence of Maryland Rule 4-215(e). *See State v. Graves*, 447 Md. 230, 241-42 (2016). The request "does not need to be in writing or worded in a particular manner[.]" *Id*. at 242.

In *Snead v. State*, 286 Md. 122, 125 (1979), the Court held that Maryland Rule 4-215(e) was triggered when the defendant made several statements indicating his dissatisfaction with the public defender who was representing him. The defendant said,

inter alia, "I feel as though that I would like to get a delay in this case to get my nephew and my family time to get another attorney. From my understanding, Mr. Groton [Snead's assigned public defender], the way he is talking, I am guilty before I even come in the courtroom." Similarly, in *Leonard v. State*, 302 Md. 111, 114-17 (1985), the defendant made several references to his not wanting current counsel to represent him and wanting another attorney. Among other things, he said ". . . can I get appointed another counsel?"; "I don't think [defense counsel is] fairly representing me. Why can't I get appointed other counsel?" *Id.* Those statements triggered the inquiry required by Rule 4-215(e).

In *State v. Hardy*, 415 Md. 612 (2010), Hardy made a series of very specific complaints about his relationship with his counsel including:

> I haven't talked to my lawyer an hour in over a year. <u>I've had her for a year. I haven't even talked to my lawyer one hour</u>. I'm saying, that's no time to prepare a case. <u>I spoke to her 15 minutes</u> with her out in Hagerstown because she had to leave. I can't prepare a case in 15 minutes[.]

Id. at 618 (emphasis in original).

He also complained: "I feel like she don't believe in me. You know what I'm saying. <u>She asked me to take time for something I didn't do</u>." *Id.* at 619 (emphasis in original). The *Hardy* Court said:

> <u>A defendant makes such a request [to discharge counsel] even when his or her statement constitutes more a declaration of dissatisfaction with counsel than an explicit request to discharge</u>. *See, e.g.*, [*State v.*] *Campbell*, 385 Md. [616,] 632 [(2005)] (finding request to discharge counsel when defendant stated "I don't like this man as my representative. . . . We had conflicts way before this ever started");

> *Fowlkes v. State*, 311 Md. 586 (1988) (treating as request to discharge counsel defendant's statement that "[i]f possible I would rather get rid of her [my attorney], get new [sic] attorney"); *Leonard*, 302 Md. at 125 (declaring request to discharge counsel "obvious" where defendant said "can I get appointed another counsel? . . . Well, he's not representing me then"); *Snead*, 286 Md. at 131 (finding request to discharge counsel when defendant said "I don't want no attorney then").
>
> Hardy's statement here was hardly talismanic, but it communicated nevertheless his unhappiness (albeit a passing state of mind at the time) with his trial counsel clearly enough to constitute a request to discharge counsel. Although not worded as a decisional motion, Hardy's declaration that he was "thinking about changing the attorney or something" reasonably should have led a trial judge to conclude that Hardy wanted, or at the very least was inclined, to discharge his counsel. That is all that Maryland law requires in order for a court to consider his statement a request to discharge counsel and address the matter accordingly. As in *Campbell*, *Fowlkes*, *Leonard*, and *Snead*, Hardy's statement was an indication of dissatisfaction with his lawyer, and, likewise, Hardy's statement qualifies as a request to discharge defense counsel.

Id. at 623 (emphasis added, footnote omitted).

The Court, in *State v. Davis*, 415 Md. 22 (2010), which was decided about two months prior to the *Hardy* case, had before it a case where the defendant's dissatisfaction with counsel was relayed to the judge by trial counsel not defendant. The Court held that an inquiry under Md. Rule 4-215(e) was "not mandated unless counsel or the defendant indicates that the defendant has a present intent to seek a different legal adviser[.]" *Id*. at 33. Counsel for Davis made a statement to the County Administrative Judge on the morning of trial that the defendant had told him (defense counsel) that "he didn't like [defense counsel's] evaluation" and that he "[w]anted a jury trial and new counsel." *Id*. at 27. Those statements were deemed sufficient to constitute a request to discharge

counsel triggering the procedure set forth in Md. Rule 4-215(e). *Id*. at 33. The *Davis* Court stressed that defense counsel "explicitly reported [the defendant's] dissatisfaction to the court" followed by the defendant's request for new counsel. *Id*. at 34-35. The Court pointed out that the dissatisfaction and request taken together, "reasonably indicate[d] that [the defendant] found fault with his representation, and thus the court was obligated to ascertain the defendant's reasons." *Id*. at 35. Importantly, the *Davis* Court attempted to allay the State's fears that its decision would place an undue burden upon trial judges, stating: "We do not suggest that a mere hint of discord within the defense's ranks <u>from any source</u> demands investigation." *Id*. at 36 (emphasis in original).

The Court of Appeals, in *Williams v. State*, 435 Md. 474, 486-87 (2013), reiterated its interpretation of Maryland Rule 4-215(e) to mean that a request to discharge counsel is "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *See also Graves*, 447 Md. at 241-42.

In *State v. Weddington*, 457 Md. 589 (2018), the defendant wrote letters to the circuit court dated November 24, 2015 and January 20, 2016; in each letter he explicitly expressed his strong disappointment with the way his lawyer was representing him. *Id*. at 593-95. In his letter of November 24, 2015, he said that he and his lawyer were not getting along, that he did not trust counsel, that "'words have been xchanged [sic]'" and that his attorney had "failed to contact anyone or retrieve information that would establish the motivations of his accusers." *Id*. at 594 (footnote omitted). The letter of

January 20, 2016, said that his public defender was "sure of [his] guilt" and had refused to help him. *Id*. at 594-95. In *Weddington*, the Court said:

> We have previously explored instances when Rule 4-215 was, and when it was not, triggered. For example, in *Williams*, we determined that a defendant's letter to the [c]ircuit [c]ourt in which he requested new representation from the Public Defender's Office and indicated that his attorney had no interest in trying to help him with his case, had "clearly, solely, and unequivocally" expressed the defendant's desire to discharge his counsel. 435 Md. at 489. The defendant's letter triggered Rule 4-215(e). *Id*. at 488. In *Graves*, we held that a verbal request to discharge counsel effectively triggered Rule 4-215(e) when the request was made by the attorney on behalf of the defendant. 447 Md. at 244 (holding that the attorney's statement that "[Mr. Graves] has informed me that he would prefer to have John Robinson represent him in this matter as opposed to myself" implicated Rule 4-215(e)); *see also Gambrill v. State*, 437 Md. 292, 305 (2014) (reasoning that defendant's counsel's statement, "Your Honor, on behalf of Mr. Gambrill, I'd request a postponement. He indicates he would like to hire private counsel" was not a "paradigm of clarity" but that the statement "mandated judicial inquiry followed by a determination").
>
> By contrast, in *State v. Northam*, we determined that Rule 4-215(e) was not triggered when the defendant made a vague request for a court-appointed attorney that was "buried in the final sentence of the final paragraph" of a motion to transfer venue. 421 Md. 195, 206 (2011). The defendant in that case urged this Court to infer from the record that he had attempted to express his desire to discharge his counsel but that his attempt had been thwarted by the judge and his attorney. *Id*. at 207. We declined to engage in such inference-making. *Id*.
>
> Here, it is without question that the statements included in Mr. Weddington's November 24 Letter and January 20 Letter were clear, unmistakable requests to discharge his counsel.

Id. at 601-02 (footnote omitted).

In the case of *Wood v. State*, 209 Md. App. 246 (2012), *aff'd* on different grounds, 436 Md. 276 (2013), we held that a defendant's mere expression of dissatisfaction with

counsel, without more, does not require the inquiry mandated by Rule 4-215(e). *Id*. at 287-88. In *Wood*, the defendant argued that the inquiry required by Maryland Rule 4-215(e) was triggered after he told the court that he had "problems" with his public defender because he had not received copies of the State's discovery responses from his attorney. *Id*. at 286. After Wood reiterated this complaint, the motions judge interjected "'You don't think [your counsel is] effectively representing you,' and appellant responded, 'there we go, yes.'" *Id*. at 286. In *Wood*, we focused on the issue of whether anything the defendant said indicated a present desire to discharge Klenk, Wood's assigned public defender. In *Wood*, Judge Shirley Watts, speaking for this Court, said:

> Applying principles gleaned from relevant case law, we are satisfied that appellant's written and oral communications were not "statements that would reasonably apprise [the circuit] court of [his] wish to discharge [Klenk as his] counsel[.]" *Davis*, 415 Md. at 32. As set forth above, at no point did appellant or anyone else state that he was "thinking about changing [his] attorney or something[,]" *Hardy*, 415 Md. at 618 (emphasis omitted), that he "[w]anted . . . new counsel[,]" *Davis*, 415 Md. at 25 (first alteration in original), that he "stated something [ ] about the release of his counsel[,]" *Joseph* [*v. State*], 190 Md. App. [275,] 280 [(2010)], that he did not like Klenk "as [his] representative[,]" Klenk "told [him] he [was not] going to represent him" or Klenk did not "have [his] best interest at heart[,]" *Campbell*, 385 Md. at 632, or anything of a similar nature that would have indicated to the circuit court that he was attempting to discharge Klenk as his counsel. Appellant's statement that he had been "having problems" with Klenk and his agreement with the circuit court that he did not feel Klenk was effectively representing him did not rise to the level of mandating a Maryland Rule 4-215(e) inquiry because nothing about appellant's statements "indicate[d] that [he] ha[d] a present intent to seek a different legal advisor[.]" *Davis*, 415 Md. at 33.
>
> All of appellant's statements about Klenk were rooted in his request to obtain a copy of the State's discovery. Although appellant is correct that nothing within Maryland Rule 4-215(e) requires a defendant to renew the request to discharge counsel at trial, the Rule clearly

> requires that to trigger its application a request to discharge must be made. In expressing a concern over the lack of discovery, appellant did not explicitly request to discharge Klenk, or notify the circuit court in any manner of the desire to seek different counsel. Compounding the lack of notification to the court of a desire to seek different counsel, appellant accepted Klenk's representation without complaint at three additional pretrial hearings, trial, and sentencing. For all of these reasons, we conclude that the circuit court properly addressed appellant's concerns over the lack of discovery and did not violate the procedures set forth in Maryland Rule 4-215(e).

Id. at 287-88 (emphasis added, footnote omitted).

In the case *sub judice*, as mentioned earlier, there are only three statements, among the flood of words appellant uttered at the joinder hearing, that appellant relies upon in support of his contention that the motions judge should have known that he had the present desire to discharge his counsel.

The first statement relied upon was made in response to Judge Jackson's inquiry as to whether appellant wanted a rehearing on the joinder motion. Appellant responded in the affirmative and said that he wanted a new hearing because he "need[ed] to speak for myself obviously to see, to take forth and make her [counsel] understand, make you [Judge Jackson] understand that you see the points that I would like to argue." That statement did not indicate that appellant had the present intent to discharge his counsel. Instead, it simply conveyed the thought that appellant wished to personally put on the record his thoughts as to why the cases should not be joined.

Appellant argues that "[i]t is further evident that the motions court should have conducted this inquiry [required by Md. Rule 4-215(e)], because [he] made a nearly identical protestation during the course of trial[,] which did trigger the trial court to

conduct the requisite inquiry." Appellant emphasized that both at trial, as well as during the motions hearing, he told the court that he was receiving "unofficial counsel" from his assigned public defender. A close reading of comments one, two and three, shows that at the joinder hearing, he never claimed that he received "unofficial counsel" from counsel. He did, however, use the term "unofficial counsel" several times at the hearing before Judge Jackson. The term has no obvious meaning and at the joinder hearing, unlike at trial, appellant never gave any indication of what he meant when he used the term. And, of course, in determining whether appellant conveyed to Judge Jackson his desire to have different counsel, we cannot utilize the definition of "unofficial counsel" that he supplied to the trial judge some three months after the joinder hearing.

Appellant argues, impliedly at least, that his criticism of his counsel in comments two and three, should have alerted the motions judge to the fact that he wanted to discharge her. Whether that argument has merit depends on a close reading of each of those comments and the context in which the statements were made.

In regard to comment two, set forth at page 10, *supra*, context is important. As mentioned earlier, immediately after his counsel made her argument as to why the State's joinder motion should be denied, appellant raised his hand indicating that he wished to say something. Judge Jackson did not let him speak but allowed counsel to consult with him. Immediately after she did so, she pointed out that only two of the three robbery victims had said that the person who robbed them had a gold knife. It

was in that context that appellant made comment two, in which he said that he "totally understood" that he had a right to ask for a rehearing on the joinder motion and then added: "I actually stopped [counsel] and asked her . . . [and told] her to speak those things. I told her that." He did not say one way or the other, whether counsel failed to "say the things" he wanted her to say but in his next statement to the judge, (see page 10, *supra*) he at least implied that what he wanted her to say was that in one of the three robberies, the victim did not indicate that the robber used a gold knife. Because that is exactly what she did point out immediately after she conferred with her client (see page 6, *supra*), it is not even clear that comment two is a criticism of his counsel. And, in any event, when read in context, comment two did not indicate that appellant had the present intent to discharge his counsel.

We turn next to comment three. Comment three is essentially a profane and rude criticism of the motions judge and the prosecutor. The only way we could interpret comment three as constituting a criticism of his counsel is if we were to interpret the words "unofficial counsel" to mean "ineffective counsel." Judge Jackson had no reason to know that is what appellant meant. If appellant wanted new counsel, the record discloses no reason why he would not have simply told the judge that was his desire. After all, appellant did address Judge Jackson directly on several occasions, even engaging in a lengthy discussion with Judge Jackson about the merits of his joinder ruling and how appellant could seek reconsideration of it. Because appellant

did not make his wish to have new counsel known to Judge Jackson, the duty to make the 4-215(e) inquiry was not triggered by comments one, two or three.

CONCLUSION

This case is analogous to *Wood*, *supra*, where the defendant expressed a concern about the failure of his lawyer to provide him with the State's discovery responses, but did not explicitly ask to discharge his counsel "or notify the circuit court in any manner of the desire to seek different counsel." *Wood*, 209 Md. App. at 288. In the case, *sub judice*, there was, at most, "a mere hint of discord within the defense's ranks." *Davis*, 415 Md. at 36. But such a hint is not enough to trigger the inquiry mandated by Rule 4-215(e). *Id*.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.