Circuit Court for Wicomico County
Case No. C-22-CR-17-000463

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2793

September Term, 2018

HAKEEM D. WRIGHTOUT

v.

STATE OF MARYLAND

Friedman,
Shaw Geter,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 24, 2020

A jury in the Circuit Court for Wicomico County convicted appellant, Hakeem D. Wrightout, for his part in the commission of a bank robbery. The trial court sentenced Wrightout to 70 years' incarceration, after which he noted this timely appeal, asking us to consider the following:

> 1. Did the trial court err in failing to conduct the necessary inquiry to determine whether Mr. Wrightout's reasons for discharging counsel were meritorious and/or abuse its discretion in finding no meritorious reasons?
>
> 2. Was Mr. Wrightout impermissibly convicted based on uncorroborated accomplice testimony?

Finding no error, we affirm the judgments of the trial court.

BACKGROUND

On December 9, 2016, five masked men rushed into The Bank of Delmarva in Salisbury, Maryland. Two of the men, armed with handguns, held the bank employees at gunpoint, two of the men used zip ties to bind the hands and feet of the three bank tellers, and the fifth man collected approximately $11,000 in cash in a blue duffel bag. The robbers also took cell phones, purses, and tablets belonging to the bank employees. The entire incident was captured on the bank's video surveillance system.[1]

The money taken included "bait money," a bundle of $2,000 containing a tracking device which alerted the police and bank president every five seconds of its location. The police tracked the bait money to a nearby residential area, where a man told them he saw a

[1] None of the bank employees were able to identify Wrightout as one of the robbers because all the men were "completely masked."

man place a blue duffel bag under his car. The police recovered the bag, which contained zip ties and all of the stolen cash.[2] The police also tracked the cell phones taken from the bank employees and one was recovered inside a parked vehicle with two individuals: Kalvin Holley and Tanisha Bathia. Holley was arrested and Bathia was taken in for questioning.

On December 10, 2016, the police went to Holley's home, which he shared with his girlfriend, Heather Mitchell[3] to ask if any man, other than Holley, had been at the house that night, to which Mitchell said no. The police returned later to tell Mitchell that Holley had been arrested for a robbery and to search her home and seize her truck, which Holley had driven the night of the robbery. During the search of the home, the police located a loaded Phoenix Arms .22 caliber handgun, a cell phone belonging to one of the bank robbery victims, and a tablet belonging to another victim.

After giving the police a recorded statement, Mitchell returned home from the police station to find Wrightout, Holley's best friend, asking for Holley. When Mitchell told him Holley had been arrested, Wrightout became upset and expressed disbelief that Holley was "going down for something that [Holley] found." Later, Wrightout sent Mitchell a text message saying that he could not breathe or think straight.

[2] A subsequent police investigation revealed that a man, later identified as Richard Moise, had purchased the zip ties from a local Wal-Mart on December 8, 2016.

[3] Mitchell was charged as a conspirator in the bank robbery but agreed to cooperate with the State and testify against Wrightout.

Another individual, Richard Moise, was arrested for his involvement in the robbery following a traffic stop. Pursuant to a search warrant, the police obtained Moise's cell phone as well as evidence of the recent purchase of camouflage clothing, black gloves, and zip ties.[4]

A day or two later, Tairell Copper was also arrested for his part in the bank robbery. Copper did not initially admit to his involvement but later pleaded guilty to armed robbery and agreed to testify against Wrightout.

Wrightout was arrested on December 19, 2016. In his statement to police, Wrightout denied knowing "anything about any robberies" or knowing Moise and Copper. At first, Wrightout claimed that he knew Holley and Mitchell but not very well and that he did not know where they lived. He later changed his story and said he may have been at Holley's house "a couple of months ago." When the interviewing detective explained that the police had evidence that Wrightout had been to Holley's house the day after the robbery, Wrightout again changed his story and admitted that he had been at their residence that day.

At trial, Copper identified himself, Wrightout (known as "Keem"), Holley, Moise, and Vetho Anati as the bank robbers seen in the bank surveillance video and from photo line ups. He explained that it was Moise's idea to commit the robbery. During the robbery, Copper said that Wrightout carried a gun and pulled bank employees out of their offices,

[4] The bank surveillance video showed one of the robbers wearing camouflage clothing.

while Holley went into the safe, and Moise collected the money in a blue duffel bag.[5] After exiting the bank, Moise dropped the money off somewhere, but Copper and Anati were unable to locate it.

Data extracted from Holley's phone revealed a text message from December 9, 2016, stating that he was "chilling with Keem," as well as multiple phone calls from Holley to Wrightout on that day. Location data from Holley's phone placed him at the bank on the morning of the robbery and again between 5:17 and 6:03 p.m. that evening. Moreover, at 3:15 p.m. on the date of the robbery, Holley sent a text message to Wrightout that stated, "I'm ready." Holley's phone was also at the location where the stolen money was recovered.

Information extracted from Copper's phone revealed internet searches for the bank's location and hours of operation, gun stores in Delaware, and Salisbury sunset times. Moise's phone yielded internet searches for police response time to a bank robbery, gun holsters, bank procedures during a bank robbery, what to do in a bank robbery, how police respond to bank robberies, how to pick up a police scanner, and police officer shift changes.

On the day of the robbery, Wrightout made about 100 telephone calls and 90 of them were made to the men involved in the robbery. Moreover, no calls to or from his phone were made when the bank was robbed.

[5] Moise and Holley were later determined to be contributors of DNA recovered from the handle of the duffel bag.

DISCUSSION

I.

Wrightout first contends that the trial court erred in failing to conduct the necessary inquiry to determine whether his reasons for attempting to discharge his attorney were meritorious. In addition, he claims, the trial court abused its discretion in finding that he had no meritorious reason to discharge his attorney.

On December 14, 2017, Wrightout appeared at a pre-trial conference with his assigned public defender, Michael Richardson. Richardson explained to the trial court that he had met with Wrightout the day before, at which time Wrightout expressed his dissatisfaction with Richardson's services and said that he had "written a letter to obtain new services." The following discussion occurred:

COURT:	Okay. Now, Mr. Richardson just stated that you're unhappy with his services; is that correct?
WRIGHTOUT:	Yes.
COURT:	All right. And is it your desire to discharge him as your attorney?
WRIGHTOUT:	Yes.
COURT:	Okay. Now, you understand that we're scheduled for trial on Monday and Tuesday, you understand that?
WRIGHTOUT:	Yes.
COURT:	Now you understand that—is it your desire—well, let me back up. Are you intending to hire private counsel to represent you in this matter?

WRIGHTOUT: Well, I just wanted somebody else to represent me. But I didn't know it was going to trial on Monday because he stated he was going to postpone it.

COURT: Well, he's asking for a postponement but we're going to talk about that. But I first want to deal with his representation of you. Why are you unhappy with his services?

WRIGHTOUT: I left my paper in there. Well, he got my notes. But on last Saturday, December the [9th] … he had come to seen me and he asked me to take a plea and I stated to him I didn't want to take a plea because it's all lies and hearsay. And then he just started screaming on me. He's like I'm not trying to go forward with your case at all. I'm like, well, what are you here for then. And he's like, well, I hope you're not believing on God because he's not going to save you, that's like believing in the Easter bunny. I'm like why did you say that? It didn't even come out of my mouth to say nothing about that. So I'm like, you're not even making sense right now, you're not even trying to like talk to me, and then he just kept on screaming. Next thing you know he just up and walked off. And I'm like so you're just going to leave, you are just going to walk off? And he left. So I'm going back to my cell, I'm just documenting now, just writing it down.

So I go to the law library, then I see some stuff about another person going through that same situation. So I'm like maybe I'll just send a letter to somebody in the courthouse about it. And that's why I wanted somebody else to represent me.

* * *

COURT: Okay. So is the sole basis for your discharge of Mr. Richardson the meeting that you had with him on the 9th?

WRIGHTOUT: Say that again?

COURT: Is the sole reason why you want to discharge him because you're not happy with how the meeting went on December 9th or do you have other reasons?

WRIGHTOUT: No other reason, just that.

RICHARDSON: Your Honor, I believe he's expressed continual reasons inside in the lockup.

WRIGHTOUT: What did you say?

RICHARDSON: You expressed more reasons in the lockup just a few minutes ago that you were dissatisfied with my services.

WRIGHTOUT: No, it was just that situation there. I stated just a minute ago about I didn't want to—I wanted to go along with it until Monday and go to court. You stated you're not ready and then I'm still sitting in jail, I've been there almost a year. … Like it's difficult trying to be there to still sit there, I just want to get this over with. I don't know what the holdup is, we had our initial appearance five going on six months now and this still isn't done. I don't know what's going on. I just want to get it over.

* * *

COURT: Now, your attorney—so, Mr. Wrightout, here's the thing. You're going to have meetings with your attorney that aren't going to go well. Sometimes that happens. That's the nature of—I mean, obviously as you expressed to me, you understand that mistakes as to what's occurring here are very high, right?

WRIGHTOUT: Uh-huh.

COURT: And you're facing some very serious charges and a lot of time. Mr. Richardson is—you know, I don't really want to get into really what your discussions are too much because those are protected between the two of you. But I would note that just the fact that you weren't necessarily happy with how a meeting went doesn't lead to good cause to discharge your attorney.

Now you have a right to discharge your attorney. I mean I could hold him in, we're so close to trial, but you in theory have a right to discharge your attorney. The issue is that based on what you've told me so far I don't think—well, you would not be entitled to another attorney from the Public Defender's Office. So the option would be that you could move forward with Mr. Richardson, who is going to represent you through the Public Defender's office, you could represent yourself, or you could find private counsel. Private counsel again means someone that you have to pay for.

WRIGHTOUT: Well, I understand that things are not going to go right when we have our visits and stuff, that's why I thank him all the time for coming. I don't disrespect him or nothing like that. That just kind of shocked me out of nowhere when I was thanking him for just showing up, helping me to get through some of this stuff. And that was the only reason, because we never had a problem before. That was the only reason I wanted to get somebody else. But I don't want to represent myself only because—

COURT: Well, I don't really want you to represent yourself. And I'm not saying that, you know, I don't mean that—I'm really not joking about that, it's just that attorneys are attorneys for a reason. Even if you want to get up on the stand and testify and do things, Mr. Richardson can advise you. But even as it relates to evidence coming in, the procedures of picking a jury, all the other things that go on in a courtroom, I want you to have the guidance of an attorney. You know, I think it's necessary in light of, you know, especially the seriousness of the case that you're looking at here. I think the State has 20 plus witnesses that they are talking about bringing in. I mean, this is going to be a major two to three day trial that we're talking about, so I want you to have counsel.

The issue is that if you discharge Mr. Richardson, I don't think there's good cause in the sense of his representation that would entitle you—that the Office of the Public Defender would say, yeah, we're going to give you a different attorney. That's not how it works.

Now if you said to me, for example, Mr. Richardson was showing up drunk at your meetings, you know, he was doing things of that nature then the Office of the Public Defender would potentially appoint you a new attorney. But that's not this situation. You had a meeting that, you know, didn't go well. You may have more of those, quite frankly, as you discuss the case and work through all the issues of the case.

WRIGHTOUT: So it's okay for him just, if he continue on, to disrespect me?

COURT: Well, I can't say that to you right now what the Court would do if you were to continue to have antagonistic or angry meetings; do you understand what I'm saying?

WRIGHTOUT: Yes.

COURT: But based on one meeting, you have not risen to the level of what I would call good cause for his discharge.

Now if we continue this matter and over the next two months you come back in and you say, look, and Mr. Richardson may say the same thing, you know, we're screaming at each other, we can't have communication, we can't—then that may be different. I would note that, you know—well, I'll leave it at that. I can't speak for what may happen in the future, is what I'm saying to you. I can only speak to what's in front of me right now. And right now I think that's where it leaves us.

At trial, Richardson represented Wrightout without any further objections.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to counsel. *Lopez v. State*, 420 Md. 18, 33 (2011) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). These constitutional guarantees encompass not only the right to assistance by an attorney but also the right to reject counsel and represent oneself. *Id.*

Maryland Rule 4-215 implements the constitutional mandates for waiver of counsel and provides in section (e):

> 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. …

The requirements of Rule 4-215 are considered mandatory so as "to protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration." *Parren*, 309 Md. at 280. "[S]trict compliance" with the Rule is required, and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012).

Pursuant to Rule 4-215(e), when a defendant requests permission to discharge his attorney, the court must first allow the defendant the opportunity to explain why he wants to discharge the attorney. *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)). Although the trial court need not engage in a "full-scale inquiry pursuant to Rule 4-215," the record must indicate that the court at least considered the defendant's reasons for requesting his attorney's dismissal before rendering a decision. *Id.* The court is then tasked with determining whether the request is supported

by meritorious reasons. *Dykes v. State*, 444 Md. 642, 652 (2015). If the defendant presents facially meritorious reasons for dissatisfaction with his attorney, the trial court must give "careful consideration" to the validity of those reasons. *Hawkins*, 130 Md. App. at 687.

If the trial court finds that the defendant has a meritorious reason for discharging his attorney, it must grant the request and give the defendant the opportunity to retain new counsel. *Williams*, 321 Md. at 273. If the court finds that the reason given is not meritorious, it may: (1) deny the request and continue the proceedings; (2) permit the discharge but require counsel to remain on standby; or (3) grant the request and relieve counsel of any further obligation. *Id.*

"In evaluating the trial court's compliance with Rule 4-215(e), Maryland appellate courts generally apply a *de novo* standard of review." *Cousins v. State*, 231 Md. App. 417, 438 (2017). If we find that the trial court has complied with Rule 4-215(e), we review the court's determination that the defendant had no meritorious reason to discharge counsel for abuse of discretion. *Id.*

Here, the pertinent events occurred during the pre-trial hearing on December 14, 2017. Richardson informed the trial court that Wrightout was dissatisfied with his services, triggering the court's inquiry into Wrightout's reasons for seeking to dismiss his attorney. The court specifically asked Wrightout why he was "unhappy with [Richardson's] services," and Wrightout explained that his displeasure stemmed from a meeting between the two on December 9, 2016, during which, Wrightout said, Richardson tried to get him to take a plea and started screaming at him when he declined and then walked away.

The court asked if "the sole basis" of the desire to discharge Richardson was this December 9 meeting, or whether Wrightout had "other reasons." Wrightout answered that there was "[n]o other reason, just that." Even after Richardson stated that Wrightout had expressed "continual reasons inside the lockup," Wrightout disagreed, saying, "[n]o, it was just that situation there" and acknowledged that "we never had a problem before."

The court, after hearing Wrightout's complaints about the delay in his trial and his rejection of the plea deal offered by the State, advised Wrightout that the nature of meetings between attorneys and clients means that sometimes those meetings will not go well, and "the fact that you weren't necessarily happy with how a meeting went doesn't lead to good cause to discharge your attorney." The court found that a single meeting that "didn't go well" did not rise to the level of good cause to discharge his attorney, but left open the possibility of reconsidering the issue if the relationship between Wrightout and Richardson further deteriorated in the future.

Although we have acknowledged that a "complete breakdown of communication" between attorney and client does provide "good cause" to discharge the attorney, the fact that angry words were exchanged during a single meeting does not amount to a complete breakdown of communication. *Cousins*, 231 Md. App. at 439-40 (citing *Weathers v. State*, 231 Md. App. 112, 140-42 (2016) (Graeff, J. concurring)). In fact, Wrightout specified that he and Richardson had no other problems with communication, or anything else, before the meeting and that he understood that "things are not going to go right" all the time.

Therefore, we agree with the trial court's ruling that Wrightout failed to show good cause for the dismissal of his attorney.[6]

The trial court did everything required of it by Rule 4-215. We, therefore, conclude that the court did not err in conducting its Rule 4-215 inquiry, nor abuse its discretion in finding that Wrightout's reason for seeking to discharge his attorney was not meritorious.

II.

Wrightout also argues that the trial court erred in permitting the jury to convict him based solely on the uncorroborated testimony of an accomplice. Because the testimony of his accomplice, Copper, was not independently verified through other evidence, Wrightout concludes that the evidence was insufficient to sustain his convictions, and reversal is warranted.

The long-standing common law rule in Maryland has been that "a person accused of a crime may not be convicted [only] on the uncorroborated testimony of an accomplice." *Turner v. State*, 294 Md. 640, 641-42 (1982). Last year, however, in *State v. Jones*, the Court of Appeals abrogated that rule, but only prospectively. 466 Md. 142, 163-65 (2019) (holding that the weight accorded to uncorroborated accomplice testimony is a matter for

[6] Rule 4-215(e), by its plain language, requires the trial court to permit "the defendant" to explain the reasons for his request for discharge. Although the court certainly may ask to hear from the attorney, or the attorney may ask to offer his opinion on the matter, the choice by the court not to inquire of the attorney does not amount to error or abuse of discretion in satisfying the mandates of the Rule. *See Dykes*, 444 Md. at 652 ("While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to their perceptions of the reasons and need for discharge of current defense counsel.").

the jury to decide after the jury is properly instructed about the potential unreliability of accomplice testimony). Because Wrightout's trial occurred before *Jones*, the newly-adopted rule does not apply to his case. We, therefore, apply the common law rule requiring "some" independent corroboration of accomplice testimony. *See id.* at 170.

Under the common law rule, "only slight corroboration" of accomplice testimony is required. *McCray v. State*, 122 Md. App. 598, 605 (1998). "On the issue of legal sufficiency, … the evidence of 'slight' corroboration need not be particularly persuasive; it need only be a *prima facie* case arguable enough to let the jury consider the question of corroboration." *Williams v. State*, 131 Md. App. 1, 8 n.1 (2000). This Court determines only whether there is any independent evidence "tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself." *Jones*, 466 Md. at 151 (quoting *Ayers v. State*, 335 Md. 602, 638 (1994)); *see also Turner*, 294 Md. at 646 (explaining that "evidence offered as corroboration must be independent of the accomplice's testimony").

Although Copper identified Wrightout in the bank surveillance video, the State arguably presented no independent corroborating evidence to show Wrightout's participation in the crime itself. No victim was able to identify him, no fingerprint or DNA evidence tied him to the robbery, and the gun and bag allegedly carried by Wrightout were never recovered. Such evidence is not required, however, so long as the State presents sufficient evidence to "identify the accused with the perpetrators of the crime." *Brown v. State*, 281 Md. 241, 244 (1977). The State adduced evidence that Wrightout, despite denying his acquaintance with Copper (who pleaded guilty for his participation in the

robbery) and Moise (whose DNA was found on the handle of the duffel bag in which the stolen money was recovered), had their phone numbers saved in his phone under their nicknames. Wrightout also initially denied knowing Holley (whose DNA was also found on the handle of the duffel bag and who was in possession of cell phones and a tablet taken from the robbery victims) and Mitchell (who said Wrightout was Holley's best friend, that he was looking for Holley the day after the robbery, and exhibited great distress after learning that Holley was arrested).

In addition, the State presented evidence of the data extracted from the cell phones of Wrightout and the other men involved in the robbery. On the day of the robbery, Holley texted that he was "hanging with Keem," and, approximately two hours before the robbery, he texted Wrightout that he was "ready." In addition, Wrightout exchanged approximately 90 telephone calls with the other four men on the day of the robbery, but neither made nor received any calls at the time of the robbery itself—permitting the inference that the men were all together.

In light of the evidence presented, we hold that the State slightly corroborated Copper's testimony, thereby satisfying the low bar for the admissibility of the accomplice's testimony. As a result, we hold that the trial court did not err in finding the evidence sufficient to convict Wrightout, because "after viewing the evidence in the light most favorable to the prosecution, [a] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Donati v. State*, 215 Md. App. 686, 718 (2014).

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.