2016 IL App (1st) 132222-U

FOURTH DIVISION
March 31, 2016

No. 1-13-2222

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 3105
	)	
LARRY HAMPTON,	)	Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions affirmed. Trial court's admonishments regarding waiver of counsel substantially complied with Illinois Supreme Court Rule 401(a), and record in whole demonstrates that defendant’s waiver was knowing and intelligent and he was not prejudiced by imperfect admonishments. Because defendant later requested, and was appointed counsel, trial court was required to readmonish defendant when he again sought to waive counsel under exception to continuing waiver rule. Although admonitions should have been provided at the same time defendant waived counsel, defendant did not proceed *pro se* at a critical stage and admonishments provided before trial substantially complied with Rule 401(a).

¶ 2 Following a jury trial, *pro se* defendant Larry Hampton was found guilty of aggravated vehicular hijacking, robbery of a victim over 60 years of age, and robbery. On those counts, the trial court sentenced defendant to 45 years, 15 years and 7 years in prison, respectively. On appeal, defendant contends that both of his waivers of his right to counsel were invalid because the trial court failed to properly admonish him under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). For the reasons that follow, we affirm.

¶ 3 I. Background

¶ 4 The State charged defendant with one count of aggravated vehicular hijacking, one count of robbery of a victim over 60 years of age, one count of robbery, two counts of aggravated battery and two counts of aggravated fleeing or attempting to elude a peace officer.

¶ 5 The trial court appointed the public defender to represent defendant. On April 19, 2011, defense counsel informed the court that defendant was not satisfied with his representation and wanted to represent himself. The court confirmed defendant's desire to represent himself and warned him about the disadvantages in doing so. But before allowing defendant to proceed *pro se*, the court stated that it wanted both sides to complete discovery and to give defense counsel the opportunity to discuss trial strategy with defendant and "work out [their] differences." The court set a future court date and asked defendant to "give it one date to think about [representing himself]." Over the next five months, defendant attended multiple hearings but did not renew his request to proceed *pro se*.

¶ 6 On September 22, 2011, defense counsel again informed the trial court that defendant wanted to represent himself. The court told defendant that it would have to give him various

admonishments to ensure he was capable of representing himself, but, as it did not have time that day, it would continue defendant's request to the next week.

¶ 7 A. The September 27, 2011 Hearing

¶ 8 On September 27, 2011, the trial court confirmed with defendant that he still wanted to represent himself and had considered the court's earlier comment that proceeding *pro se* was "a very, very bad decision." The court inquired into defendant's age, educational background, mental health history and criminal background. The following colloquy then occurred:

> "THE COURT: The most serious charge you're facing which is an aggravated vehicular hijacking, that is a Class X felony. Any sentencing enhancements, [defense counsel]?
>
> [DEFENSE COUNSEL]: There would be, Judge.
>
> THE COURT: Which are?
>
> [DEFENSE COUNSEL]: I believe that if convicted [defendant] would be looking at mandatory natural life.
>
> THE COURT: So this would be his third Class X?
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: [Defendant], aggravated vehicular hijacking, the most serious charge you're facing, is a Class X felony, but because of your past criminal history, sir, should you be convicted of that charge, you're facing natural life with no possibility of parole. Not only is that the maximum sentence, it's the minimum sentence, the only

sentence that will be able to be imposed by me should this ever get to the sentencing stage. Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: Do you understand how high the stakes are for you?

THE DEFENDANT: Yes, sir.

THE COURT: Yet you persist that you want to be your own lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Can you explain to me why, sir, given what I just told you that if you are found guilty of this crime, you're faced with – you're never going to get out of prison. The rest of your life will be in prison. But with the stakes being so high, why is it you wish to represent yourself?

THE DEFENDANT: Well, as far as the case and how the case was moving along, it wasn't moving along at all, and as far as the investigation aspect of it, I mean, I've been sitting since January, and my attorney haven't [*sic*] come out there to see me at all. I mean, how can she be in my best interest or have any type of defense or told of any type of defense when you haven't even come and seen me in ten months.

THE COURT: Okay. Let's say just for the sake of this argument that we are having right here that's true. How is it going to be better for you to be acting as your own lawyer?

***

> What are you going to do regarding getting subpoenas out to witnesses, cross examining witnesses that the State will call during the course of your trial, trying to get expert testimony into evidence? You are not going to know how to lay the foundation for all those types of things. Important things that could come out in favor of your defense just aren't going to happen because you are not going to know how to do it and I can't help. I've got to be neutral. You act as your own lawyer, you're on your own. There is no standby counsel. You will be out there on a limb all by yourself. Do you understand that?
>
> THE DEFENDANT: I understand that."

¶ 9 The court said that, if defendant changed his mind prior to trial, the court would appoint counsel for him again so that his rights were protected, "especially when we are dealing with a case like this where the stakes are so high." The court then explained to defendant the benefits of having an attorney in objecting to inadmissible evidence, jury selection, "tactical decisions," determining possible defenses, and consulting with the State about a potential plea bargain. The court further explained that if defendant proceeded *pro se*, he could not raise ineffective assistance of counsel on appeal. The court cautioned defendant that the effectiveness of his defense could be compromised by his dual role of attorney and accused, and he would receive no special consideration from the court.

¶ 10 The court informed defendant that, if he was acquitted of his most serious charge, aggravated vehicular hijacking, and found guilty of another charge, "like the robbery charge or one of the other charges, then there would be a sentencing hearing where [defendant] would be facing less than [*sic*]." The court also stated, "The aggravated battery I see is in here, too."

¶ 11 The court warned defendant that, once trial started, he could not change his mind. Defendant responded that he understood. The court concluded that defendant made a "knowing" waiver of his right to counsel.

¶ 12 B. Defendant's Request for Counsel to Conduct Plea Negotiations

¶ 13 Defendant represented himself for the next three months until he indicated that he wanted an assistant public defender to assist him with plea negotiations. The court again appointed the public defender to represent defendant for plea negotiations. On the next status date, the court also appointed the public defender to represent defendant for the purpose of reviewing with him the video evidence in his case.

¶ 14 C. The January 20, 2012 Hearing

¶ 15 On January 20, 2012, defendant said that he wanted the public defender to represent him on all aspects of his case, and the court appointed the public defender as his counsel. For the next two months, the public defender represented defendant.

¶ 16 D. The March 22, 2012 Hearing

¶ 17 On March 22, 2012, defendant appeared in court again. The assistant public defender informed the court that the parties had engaged in plea negotiations, and that the State had made a plea offer. The assistant state's attorney indicated that the offer was "predicated on the aggravated vehicular hijacking that took place," which was "the most serious of the charges." The assistant public defender said that, as far as he could tell, defendant was not willing to accept the plea offer. Defendant never made any comment in court about the plea offer on the

aggravated vehicular hijacking charge. But he did tell the court that he and defense counsel "had some issues," including whether to file a motion to dismiss the indictment.

¶ 18 Defendant told the court that he wanted to move for dismissal of the indictment because he had read the transcript of the grand jury proceedings, and the testifying police officer had lied about a portion of the events in question, concerning defendant's attempted robbery of the cash register at a Subway restaurant (the details of which will be discussed *infra* at ¶ 31). The trial court discussed this issue with defendant, after which defendant decided not to file a motion to dismiss the indictment.

¶ 19 Defense counsel then informed the court that defendant once again wanted to represent himself. Defendant explained he had "no other choice" but to represent himself because of his differences with defense counsel. The court said that defendant did "have a choice" and he "just [did not] like the advice" from defense counsel. It observed that it had "admonished [defendant] previously regarding proceeding *pro se*" and allowed defendant to represent himself without additional admonitions.

¶ 20 E. The April 26, 2012 Hearing

¶ 21 About a month later, on April 26, 2012, the parties appeared before the court on some basic discovery issues. The State indicated its intention to introduce evidence of defendant's prior criminal convictions as rebuttal impeachment evidence if he testified at trial, but one such conviction was under the name "Larry Hamilton," not Larry Hampton. The State inquired of defendant in open court whether he was willing to concede that he was, in fact, the defendant in that case, or whether he would not stipulate, in which case the State would have to prove it.

Defendant said he would not stipulate. The State also sought a subpoena for aerial footage of the crime that was taken by a local news station. The State also tendered discovery to defendant.

¶ 22 Defendant then indicated that he objected to the criminal complaints filed against him. He argued to the court that they were not verified. The trial court told defendant that the complaints became irrelevant once the grand jury issued its indictment. Defendant, while holding the indictment in his hand—stating “I got it right here"—said that, "[a]s to each one of these charges, I had a sworn—I had a complaint as to aggravated battery. And as to each one of these counts, I had a complaint for them." The court said once again that the validity of the complaints was no longer an issue. The court then proceeded to tell defendant once again that he was "doing [himself] a disservice" by representing himself as he did "not understand the procedure at all." The court continued, saying it had "been trying to encourage [defendant] to accept legal representation, and [he had] resisted" those efforts. Because defendant's jury trial was approximately two weeks away, the court gave defendant one "last chance" to change his mind and accept court-appointed counsel, but defendant refused.

¶ 23 F. The May 2, 2012 Hearing

¶ 24 On May 2, 2012, a substitute judge appeared while the trial judge was on vacation. The substitute judge asked defendant whether he was representing himself, and defendant acknowledged that he was. The following exchange occurred between the court and defendant:

> "THE COURT: I assume that you have heard the admonishments from Judge Howard about the concern the Court has about someone representing themselves?
>
> DEFENDANT: Yeah.

THE COURT: You understand the serious nature of this case?

DEFENDANT: Yes, sir.

THE COURT: Has Judge Howard explained to you the possible sentencing on this if you were to lose this case?

THE DEFENDANT: Yes, he have [*sic*], your Honor.

THE COURT: You understand that one of these counts is a Class X felony, and I understand based on background that that would mean that you would be looking at a potential life sentence, do you understand that?

THE DEFENDANT: Yes, sir.

[discussion of pre-trial matters]

THE COURT: I know that Judge Howard has explained to you and I have explained to you the possible deficiencies in one representing themselves. You understand that and you wish to represent yourself, is that correct?

DEFENDANT: Yes, sir.

THE COURT: Okay. You have that constitutional right.

¶ 25 The court, near the end of the hearing, told defendant that "there will come a time during the trial where you will realize that you are in over your head" and "I have seen it many times where a pro-se litigant will be in over their head and they will look at the judge and the look on their face will be, in effect, Judge, can you help me, and the answer is no." The court later said, "[i]n essence, what you need to understand is that it's a very dangerous undertaking to represent yourself, especially if you don't have the education and experience of a lawyer."

¶ 26 G. The May 7, 2012 Hearing Prior to Trial

¶ 27 On the following Monday, May 7, 2012, the day that the trial was to begin, defendant told the court that he "had a motion that couldn't be heard last week" while the trial judge was on vacation and a substitute judge was presiding. Defendant told the court that it was a "motion for recusal." A new judge was brought in.

¶ 28 That motion had not been filed with the court on the May 2 hearing date the previous week, and it apparently was never filed, because we cannot locate it in the record. But it is clear from the record that defendant read from the motion verbatim, as the judge who was brought in to hear the motion to substitute told defendant that "[i]f you are going to read this motion, you have to slow it down so that the court reporter can take it down," and defendant ended his presentation by saying, "Respectfully submitted, defendant pro se, Larry Hampton." Among many other things about which defendant complained in this motion he read to the court, he complained that, at his initial admonishments in September, 2011, his lawyer should not have told the court that his criminal history made him eligible for a life sentence: "My attorney should have just said it's a 6-to-30 offense." The judge brought in to hear the motion for substitution of judge denied the motion, and the original trial judge presided over defendant's trial.

¶ 29 H. The Trial

¶ 30 At trial, the evidence showed that on January 26, 2011, 66-year-old taxi driver Ilias Papaioannou picked defendant up from a hotel in Rosemont in a minivan. Defendant asked Papaioannou to drive him to a Subway restaurant, and when they arrived, defendant told him where to park. Defendant briefly went inside the Subway, then returned to the vehicle and

instructed Papaioannou to drive to another Subway restaurant. At the second Subway, defendant told Papaioannou where to park and entered the Subway.

¶ 31 In the restaurant, defendant ordered a cookie. When Subway employee Jose Santiago opened the cash register, defendant rushed behind the counter and forced Santiago away from the register by punching him. Santiago grabbed a nearby knife and fought back. While they were fighting, Papaioannou, curious why defendant was taking so long inside, approached the Subway and observed the altercation. Once defendant separated himself from Santiago, he grabbed the cash register and tried to take it with him, but the register fell to the floor. Defendant ran out of the front door of the Subway, grabbed Papaioannou by his neck and demanded his vehicle's keys. Defendant ripped the keys from Papaioannou's pocket and ran toward the minivan. Papaioannou followed defendant to the vehicle, but defendant punched him in the chest and drove the minivan away.

¶ 32 Various police officers received dispatches that a minivan had been stolen and pursued defendant. Defendant led the officers on a high-speed pursuit for approximately an hour until the minivan collided with a school bus and eventually crashed into a light post. Defendant climbed out of the vehicle and fled on foot until a Chicago police officer tackled him. The State introduced video evidence from inside the second Subway restaurant and of the police's pursuit of defendant.

¶ 33 After argument and deliberations, the jury found defendant guilty of aggravated vehicular hijacking, robbery of a victim over 60 years of age, and robbery. Prior to sentencing, the court appointed the public defender to represent defendant in posttrial proceedings. The court noted

that defendant did not participate in the presentence investigation because he indicated "there was no real purpose" given his mandatory natural life sentence. After reading the presentence investigation report ("PSI"), the court, however, observed that defendant had only been previously convicted of one eligible Class X felony, not two, and he was thus not subject to mandatory life in prison. As a result of the discovery, the court ordered a new PSI.

¶ 34 Defendant filed an unsuccessful motion for a new trial. He did not include any allegations that the trial court improperly admonished him prior to his waivers of counsel. The court sentenced defendant to an extended-term sentence of 45 years in prison for aggravated vehicular hijacking, 15 years for robbery of a victim over 60 years of age and 7 years for robbery, all to run concurrently. This appeal followed.

¶ 35 II. Analysis

¶ 36 Defendant contends that his convictions should be reversed and the cause remanded for a new trial because the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before both of his waivers of counsel.

¶ 37 Defendant concedes that he failed to preserve his claim for review but asserts that we may address it as plain error. Generally, an issue is forfeited if it is not raised both at trial and in a posttrial motion (*People v. Leach*, 2012 IL 111534, ¶ 60), as in this case. But the plain-error doctrine allows us to bypass a party's forfeiture if either "(1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence." *People v. Wright*, 2015 IL App (1st) 123496, ¶ 44, *appeal allowed*, No 119561

(November 25, 2015). Defendant bears the burden of persuasion on both prongs of the doctrine. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 38 Defendant argues that the second prong applies here. In deciding whether the plain-error doctrine applies, we must first determine whether error occurred in the first place. *People v. Eppinger*, 2013 IL 114121, ¶ 19. We will first address the trial court's initial admonishment to defendant on September 27, 2011.

¶ 39 A. Defendant's Initial Waiver and Admonishments

¶ 40 A defendant has the constitutional right to represent himself. *People v. Baez*, 241 Ill. 2d 44, 115 (2011). To ensure that a defendant's waiver of his right to counsel is knowing and intelligent, the trial court must admonish defendant pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before allowing him to waive his right to counsel. *People v. Campbell*, 224 Ill. 2d 80, 84 (2006). Under Rule 401(a), the trial court must inform defendant of and determine that he understands: "(1) the nature of the charge; (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984). The purpose of these admonishments is to eliminate any doubt that defendant appreciates the nature of the charges against him and their consequences, and to prevent him "from waiving the right to counsel without full knowledge and understanding." *People v. Meeks*, 249 Ill. App. 3d 152, 171-72 (1993). Whether the trial court properly

admonished defendant is a question of law that we review *de novo*. *People v. Pike*, 2016 IL App (1st) 122626, ¶ 114. Only the first two admonishments are at issue in this appeal.

¶ 41 The State concedes that the trial court failed to strictly comply with the requirements of Rule 401(a) by not informing defendant of all the charges against him and their proper sentencing ranges. But strict compliance with Rule 401(a) is not required. *People v. Haynes*, 174 Ill. 2d 204, 236 (1996). Substantial compliance with Rule 401(a) "will be sufficient to effectuate a valid waiver if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." *Id.* Thus, we first address whether the court substantially complied with Rule 401(a). If we find that it did, we will next consider whether such substantial compliance was sufficient under the facts of this case, by considering whether the record otherwise demonstrates a knowing and intelligent waiver, and whether defendant suffered any prejudice as a result of the court's failure to strictly comply with that rule. *People v. Coleman*, 129 Ill. 2d 321, 334 (1989); *People v. Kidd*, 178 Ill. 2d 92, 114 (1997).

¶ 42 Defendant first argues that the court failed to inform him of the nature of the charges he faced. When informing defendant of the nature of the charges against him on September 27, 2011, the court told him he was charged with aggravated vehicular hijacking, aggravated battery and robbery. While the court neglected to inform defendant of the specifics of these three categories of charges, the rule requiring that a defendant be informed of the nature of the charges against him "does not require the trial court to state to defendant all facts which do or may constitute the offense." *Pike*, 2016 IL App (1st) 122626, ¶ 117. Rather, as used in Rule 401(a),

"the nature of the charge" (Ill. S. Ct. R. 401(a) (eff. July 1, 1984)), "connotes and is synonymous with the words essence, general character, kind or sort." *People v. Harden*, 78 Ill. App. 2d 431, 444 (1966), *aff'd*, 38 Ill. 2d 559 (1967) (interpreting the phrase "nature of the acts constituting the offense" under previous Illinois Supreme Court Rule 26(3) (Ill. Rev. Stat. 1963)). Additionally, at defendant's arraignment, the court read him all of the offenses with which he was charged. See *People v. Herndon*, 2015 IL App (1st) 123375, ¶¶ 27, 30 (fact that defendant was informed of charges at arraignment relevant in determining that he was aware of natures of charges).

¶ 43 Defendant complains that the trial court failed to inform him of "two of the five offenses with which he was charged," specifically robbery of a person over 60 years of age and aggravated fleeing or attempting to elude a peace officer. With respect to the charge of robbery of a 60-year-old, the court informed defendant that he was charged with robbery. The fact that the victim of the robbery was over 60 merely enhanced the offense and subjected defendant to a greater sentencing range. See 720 ILCS 5/18-1 (West 2010) (stating the age of the victim merely enhances a robbery offense from a Class 2 felony to Class 1 felony). That fact did not fundamentally change the nature of the charge. See *Herndon*, 2015 IL App (1st) 123375, ¶¶ 27, 30 (where defendant was not admonished as to nature of offense of delivery of a controlled substance, but trial court and State discussed other, closely-related charge of delivery within 1,000 feet of a school, defendant was adequately apprised of charge of simple delivery). We would further note that defendant had a half-dozen previous robbery convictions, and while none of them were for simple robbery, it would strain credibility to conclude that defendant did not

understand the nature of a "robbery" charge. See *id*. ¶¶ 28, 30 (where defendant had been previously convicted of "nearly identical" narcotics charge, defendant clearly understood nature of charge of delivery of controlled substance).

¶ 44 With respect to the aggravated fleeing charge, we would make two points. First, the State did not ultimately prosecute defendant on this charge. Defendant cites no decision, and we are aware of none, that reversed a conviction on one charge based on the failure to give proper Rule 401(a) admonishments on a different charge that was either dismissed or for which the defendant was acquitted. Second, even if there were any precedent for reversal based on an inadequate admonishment related to a dismissed count, we would note that the aggravated fleeing charge was relatively minor in light of the much more serious offenses of which the court told defendant he had been charged. See 625 ILCS 5/11-204.1 (West 2010) (aggravated fleeing is Class 4 felony). Again, the supreme court has found substantial compliance where the defendant was told of the most serious charge, even if the trial court failed to discuss a far less serious charge. See *Kidd*, 178 Ill. 2d at 113-14 (where trial court failed to admonish defendant as to arson charge, instead referring to aggravated arson charge, trial court substantially complied with Rule 401(a) because defendant was advised of nature of most serious charge—murder—and aggravated arson charge, though incorrect, was more serious, not less, than arson charge). We hold that the trial court's admonishments on the nature of the charges substantially complied with Rule 401(a).

¶ 45 Defendant also argues that the trial court failed to inform him of the possible sentences he faced as a result of his offenses. The trial court and defense counsel informed defendant that he

faced a mandatory sentence of life in prison if convicted of aggravated vehicular hijacking because the offense would have been his third Class X felony. See 730 ILCS 5/5-4.5-95(a) (West 2010). But after the jury convicted defendant, the trial court realized that defendant was not facing a mandatory-natural-life sentence because his conviction for aggravated vehicular hijacking was only his second eligible Class X felony, not his third. In fact, defendant was only facing a maximum of 60 years on the aggravated vehicular hijacking charge. 720 ILCS 5/18-4(a)(1), (b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant claims that the incorrect, overstatement of his maximum sentence constituted noncompliance with Rule 401(a).

¶ 46 We reject defendant's argument for two reasons. First, the difference in the maximum sentence explained to him by the trial court, compared to the one he actually should have been told, was really no difference at all as a practical matter. At the time of the first admonishment, defendant was 41 years old, meaning that he would not complete a maximum 60-year sentence until he was over 100 years old—by any measure the functional equivalent of a life sentence. By telling defendant that he could spend the rest of his life in prison, the trial court sufficiently conveyed the seriousness of the potential maximum penalty to defendant. See, *e.g.*, *People v. Reese*, 2015 IL App (1st) 120654, ¶ 124 (court substantially complied with Rule 401(a), even though court did not tell defendant that he would serve possible 160-year sentence consecutively with his current natural-life sentence; "defendant knew that he faced a possible 160-year sentence, which meant that he would spend the rest of his life in prison even if his prior murder conviction was overturned"). The court's admonishment, despite the misstatement of defendant's maximum potential sentence, still sufficiently complied with Rule 401(a).

¶ 47 Second, the maximum sentence the trial judge told the defendant, to the extent it was any different than the 60-year term he should have been told, was an overstatement of the maximum sentence, not an understatement. We have expressed concern in cases where the trial court *understated* the maximum penalty, because then the defendant is making a decision to waive counsel under the mistaken belief that the consequences are not as severe as he thought. See, *e.g.*, *People v. LeFlore*, 2013 IL App (2d) 100659, ¶ 53, *aff'd in part, rev'd in part on other grounds*, 2015 IL 116799; *People v. Jiles*, 364 Ill.App.3d 320, 330 (2006); *Wright*, 2015 IL *App (1st) 123496*, ¶¶ 47-48, *appeal allowed*, No 119561 (November 25, 2015); *People v. Bahrs*, 2013 IL App (4th) 110903, ¶¶ 14-15. But an overstatement of a maximum sentence, if anything, only makes the consequences of conviction appear *graver* than they really are, making the defendant even *more* aware of the need for a lawyer to defend him. If a defendant is willing to undertake the risk of self-representation when facing a life sentence as a possible penalty, there is no reason to believe that he would make a different decision if the consequences of conviction were *less* severe. Defendant has cited no case where an overstated maximum penalty constituted noncompliance with Rule 401(a), and we will not make such a finding in this case. We find that the trial court's admonishment on the aggravated vehicular hijacking substantially complied with Rule 401(a).

¶ 48 And while the court did not inform defendant of the possible sentences for the other, lesser charges he faced, this omission does not invalidate defendant's waiver, either, given that the court informed defendant of the maximum sentence on his most serious offense, aggravated vehicular hijacking. Our supreme court has found substantial compliance with Rule 401(a) where

the maximum sentence for the most serious charged was explained to the defendant, even if the sentence for a less serious offense was not. See, *e.g.*, *Haynes*, 174 Ill. 2d at 243 (where defendant faced murder and burglary charges but was never admonished as to burglary charge, substantial compliance found; "the importance of the defendant's having specific knowledge of the minimum and maximum sentences for the significantly less serious charge of burglary clearly 'pale[d] in comparison' " to a possible death sentence for a murder conviction) (quoting *Coleman*, 129 Ill. 2d at 334); *Kidd*, 178 Ill. 2d at 14 (where defendant was never admonished as to arson charge but was properly told that maximum sentence for murder charge was death, substantial compliance was found). Despite overstating the possible sentence for aggravated vehicular hijacking and failing to inform defendant regarding the minimum and maximum sentences for the other offenses, the court still satisfied the purpose of Rule 401(a), and we find substantial compliance with the rule.

¶ 49 Having found substantial compliance, we must next determine whether, despite the imperfect but substantially compliant admonishments, the record shows that defendant's waiver of counsel was made knowingly and intelligently, and that defendant did not suffer prejudice from the less-than-perfect admonishments. *Coleman*, 129 Ill. 2d at 334; *Kidd*, 178 Ill. 2d at 114.

¶ 50 We find from the record that defendant's waiver was knowing and intelligent, and that defendant did not suffer any prejudice as a result of the trial court's failure to strictly comply with Rule 401(a). With respect to the court's descriptions of the nature of the charges against defendant, the court read defendant all of the charges he faced at his arraignment. As we explained above, when admonishing defendant pursuant to Rule 401(a), the court described the

general nature of the charges of aggravated vehicular hijacking, aggravated battery, and robbery of a person over 60. And with respect to the aggravated fleeing charge, the State did not even proceed on that count at trial, and defendant faced no risk of being convicted of that offense. With respect to his sentence, as we explained above, the trial court overstated the severity of defendant's sentence, conveying to defendant the possibility that, as a result of his conviction, he could spend the rest of his life in prison. The record further shows that the trial court repeatedly tried to warn defendant of the dangers of self-representation, and defendant's decision not to follow the court's advice was borne of his dissatisfaction with his counsel, not his failure to appreciate the seriousness of the charges he faced. The record shows that defendant's waiver was knowing and intelligent, and that defendant suffered no prejudice, despite the court's failure to strictly comply with Rule 401(a). Because we so find, the court's substantial compliance with Rule 401(a) was sufficient.

¶ 51 B. Defendant's Second Waiver of Counsel and Admonishments

¶ 52 Defendant next claims that, even if his first waiver of counsel was valid, his second waiver of counsel was invalid, because the court failed to provide him with any Rule 401(a) admonishments. On March 22, 2012, when defense counsel indicated to the trial court that defendant wanted to represent himself again, defendant confirmed this desire, stating he had no choice. The court then stated: "Yes, you do have a choice. You just don't like the advice you're getting. I admonished him previously regarding proceeding *pro se*. So I'll allow you to proceed *pro se* ***." Defendant argues that the trial court was required to fully readmonish him at this point. For the reasons stated below, we agree that readmonishments were required, but we find

that defendant was properly re-admonished before he reached the critical stage of trial and, thus, find no error here.

¶ 53 Under the continuing-waiver rule, a valid waiver of counsel generally continues to be valid throughout subsequent proceedings. *People v. Baker*, 92 Ill. 2d 85, 91-92 (1982). There are two exceptions: (1) if, after the initial waiver, the defendant requests counsel; or (2) the circumstances of the initial waiver suggest it was limited to a particular stage of proceedings. *People v. Simpson*, 172 Ill. 2d 117, 138 (1996); *People v. Johnson*, 119 Ill. 2d 119, 145 (1987). The first exception to the rule applies here. "[I]f a defendant receives a valid admonishment of waiver of the right to counsel but then requests and receives counsel and then later again indicates a desire to waive counsel, the defendant must be readmonished." *People v. Pike*, 2016 IL App (1st) 122626, ¶ 116. On January 20, 2012, when defendant requested and received the appointment of counsel, the continuing waiver rule became inapplicable. Thus, when defendant stated for the second time, on March 22, 2012, that he wanted to proceed *pro se*, new admonishments under Rule 401(a) were required.

¶ 54 Defendant correctly notes that on that date, March 22, the trial court merely said that it had already admonished defendant. The State argues that the admonishments given by the substitute judge on May 2, 2012 substantially complied with the rule—and thus the waiver of counsel was valid before the critical stage of trial commenced on May 7.

¶ 55 First, we reiterate that Rule 401(a) is concerned with whether the defendant is "informed of" the charges and their possible sentences and whether he "understands" that information. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). The purpose of the rule is satisfied where the record shows

that the defendant "was 'aware of the information that was omitted.'" *LeFlore*, 2013 IL App (2d) 100659, ¶ 59 (quoting *People v. Gilkey*, 263 Ill. App. 3d 706, 711 (1994)).

¶ 56 So we must consider what the defendant was told by the trial court, and what he knew, at the time of the May 2 readmonishment. We have covered these readmonishments in detail above (see ¶¶ 22-24). Defendant was told on May 2 that one of the charges was a Class X offense that, based on his background, carried a life sentence. We have already explained that, while this maximum sentence was incorrect, it was substantially compliant with Rule 401(a). We see no reason to hold differently with regard to the readmonishment.

¶ 57 The more difficult question is whether defendant understood the nature of the charges against him. We have already determined above that a trial court substantially complies with Rule 401(a) if it informs a defendant of the nature of the most serious charge, in this case the charge for aggravated vehicular hijacking. But the trial court never specifically mentioned that charge during the May 2 admonishments. The closest it came was mentioning that "one of these counts is a Class X felony, and I understand based on background that that would mean that you would be looking at a potential life sentence."

¶ 58 But the case law says that if defendant already knew this information, the rule is satisfied. In *Johnson*, 119 Ill. 2d at 132, the supreme court noted that the defendant had been present during a pretrial exchange in court at which the prosecutor had mentioned the fact of a mandatory-minimum sentence of life for a murder conviction; thus, even though the trial court told him the minimum sentence was 20 years, the supreme court found substantial compliance because the defendant actually knew the correct sentence.

¶ 59 In this case, the only conclusion that we could possibly draw from the record is that defendant knew he was charged with aggravated vehicular hijacking on May 2. We base this conclusion on several facts.

¶ 60 First, at the March 22 hearing when defendant waived counsel for the second time (see ¶¶ 16-19), defendant, his lawyer, and the State had just concluded plea negotiations unsuccessfully, and the prosecutor explained to the court that the plea discussed had been a plea of guilty to "the aggravated vehicular hijacking that took place," which was "the most serious of the charges." It would be illogical to imagine that defendant, represented by counsel and considering whether to plead guilty to aggravated vehicular hijacking, was unaware that he was charged with that very crime.

¶ 61 Second, at that same hearing, defendant moved to dismiss the indictment based on perjured testimony before the grand jury. Defendant objected to testimony concerning the moments just before defendant forcibly took the vehicle that formed the aggravated vehicular hijacking charge. By his own admission, defendant had read the grand jury transcript and clearly was aware of the nature of the charges he faced.

¶ 62 Third, at the April 26 hearing (see ¶¶ 20-22), defendant "objected" to the criminal complaints originally filed against him on the basis that they had been unverified, and as he held the indictment in his hand before the court, he noted that every one of the charges had been preceded by a criminal complaint. Defendant appeared to be more than familiar with his indictment and had, by his own admission, lined up the criminal complaints with the charges. It

is again extremely difficult to believe that defendant was unaware of all of his charges, and at the very least the most serious one.

¶ 63 In addition, at the May 2 hearing, defendant was prepared to present a motion for substitution of judge, which was continued until the May 7 hearing. In that motion, which he obviously had written on or before May 2, defendant recounted the details of his *original* admonishment the previous year on September 27, 2011, when he was told that he faced a maximum sentence of life imprisonment for an offense that, but for his criminal history, would be a "6-to-30 offense."

¶ 64 Taking all of this into account, the inescapable conclusion is that defendant knew well that he was facing at least the most serious charge of aggravated vehicular hijacking, if not the other charges as well, and he understood the nature of those charges.

¶ 65 For all of these reasons, we find that the readmonishments on May 2, 2012, substantially complied with Rule 401(a). Thus, we must next determine whether, despite the imperfect but substantially compliant readmonishments, the record shows that defendant's waiver of counsel was made knowingly and intelligently, and that defendant did not suffer prejudice from the less-than-perfect admonishments. *Coleman*, 129 Ill. 2d at 334; *Kidd*, 178 Ill. 2d at 114.

¶ 66 As we have recounted in great detail above, the trial court repeatedly tried, in several different ways on several different occasions, nearly to the point of pleading, to convince defendant to retain counsel for trial. His reasons for refusing to do so had nothing whatsoever to do with his failure to appreciate the seriousness of his offense or his lack of knowledge about the charges he faced. He did not trust his lawyer to look out for his best interests. Even the

knowledge that he faced life in prison was not enough to move him. We find defendant's second waiver of counsel, despite the imperfect readmonishments, to be knowing and intelligent, and we find no prejudice to defendant from the imperfect but substantially-compliant admonishments.

¶ 67 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 68 Affirmed.