

Circuit Court for Baltimore County
Case No. C-03-CR-22-005534

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0481

September Term, 2023

ADEBOYE OLAYINKA ONITIRI

v.

STATE OF MARYLAND

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: March 29, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal concerns a criminal defendant’s jury trial waiver. Appellant, Mr. Onitiri, was charged with, and subsequently convicted of, various drug-related charges in the Circuit Court for Baltimore County. At the start of the trial, Mr. Onitiri waived his right to a jury trial, and the case proceeded on a bench trial.

Mr. Onitiri presents the following question on appeal, as quoted from his brief:

Whether the court violated Md. Rule 4-246 and appellant’s federal and state constitutional rights by failing to ensure that appellant knowingly and voluntarily waived his constitutional right to a jury trial?

We affirm the circuit court’s judgment on the reasoning below.

BACKGROUND

A. Facts

On October 31, 2022, Baltimore County police served a search warrant on a house at 2445 Spring Lake Drive, during which they recovered two containers of handgun ammunition and packaging bags suspected to be for drug distribution. At the time the police served the search warrant, Mr. Onitiri resided in the basement of that house, but he was not present for the search. While police were searching the house, Mr. Onitiri drove past it. Upon seeing the police, he slowed down in front of his house. He was signaled to stop, but he fled in his car.

Two police cars pursued Mr. Onitiri until he reached the end of a cul de sac. At that point, Mr. Onitiri stopped the car and climbed over the passenger seat and out the passenger door. He then ran into some woods nearby. A police detective from one of the

police cars in pursuit ran after Mr. Onitiri to the edge of the woods. Once Mr. Onitiri disappeared into the woods, the detective called for the tactical team and a K-9 to find Mr. Onitiri.

Meanwhile, another police detective stayed with Mr. Onitiri's car. After Mr. Onitiri fled on foot, two more passengers emerged from Mr. Onitiri's car—both women. The detective questioned the women and searched the car. The search of the car uncovered a magazine with bullets and multiple bags of what appeared to be illicit substances—a bag of white powder, a bag of pink material, and a bag of what appeared to be cannabis. A chemist at the police department later tested the substances and found that the bags contained 27.3 grams of cocaine, 4.77 grams of fentanyl, and 32.47 grams of cannabis.¹

Once Mr. Onitiri was found, he was arrested and indicted on multiple charges.

B. Procedural History

On May 4, 2023, Mr. Onitiri was tried in the Circuit Court for Baltimore County on five counts:² possession with intent to distribute cocaine, possession of cocaine,

¹ The weights for cocaine and fentanyl include the weights of the bags. The weight of the cannabis did not include the weight of the bag.

² Mr. Onitiri was originally charged with six counts, but the State dismissed the last count, possession of a large amount of fentanyl, which is a felony charge that is separate from the misdemeanor charge for possession of fentanyl.

possession with intent to distribute fentanyl, possession of fentanyl, and illegal possession of ammo.³

Before trial began, Mr. Onitiri requested that the State determine if he had any open warrants. Mr. Onitiri believed that he had an outstanding warrant in Texas and thought that would prevent him from receiving parole in Maryland. The State confirmed that Mr. Onitiri had no open warrants. The State then read a plea offer into the record, which Mr. Onitiri rejected.

After ensuring both parties were ready to proceed with the trial, the court conducted a colloquy to determine if Mr. Onitiri wanted to have a bench trial or a jury trial. The colloquy proceeded as follows:

THE COURT: Okay. All right, sir, you have a right to either a Court or a Jury trial. The Court trial is a trial in front of a single Judge, today would be me. I would sit and listen to the State's evidence. You don't need to prove anything. And if I believed the State had proven its case, each and every element of the offenses beyond a reasonable doubt, I could find you guilty. If I didn't believe it to that extent, I'd simply find you not guilty.

You also have a right to a Jury trial. We'd all have a hand in selecting 12 jurors from what we call the motor and voter rolls of Baltimore County. Through a selection process, we'd select 12 jurors from a larger group of people. They would sit and listen to the same evidence that I would listen to if you chose a trial in front of me. The difference is all 12 jurors would need to unanimously find you guilty or not guilty. If they couldn't come to a unanimous decision, that would not be the end of it for you. The State in its sole discretion could simply decide to try you over and over again until they got a unanimous verdict of 12 to nothing where that would be guilty or not guilty. Do you understand that? Do you understand the difference?

³ At the time, Mr. Onitiri was prohibited from possessing ammunition because of a previous conviction.

[MR. ONITIRI]: Yes, sir.

THE COURT: Do you have any questions for me or your attorney about the differences between a Jury or Court trial?

[MR. ONITIRI]: No, sir.

THE COURT: Understanding your rights to a Court or Jury trial, which one do you select?

[MR. ONITIRI]: Court trial.

THE COURT: You want a Court trial. All right, are we ready to proceed?

[DEFENSE COUNSEL]: We are.

A bench trial followed.

During the trial, the State presented four witnesses: the chemist who tested the substances, the detective who chased Mr. Onitiri to the woods, the detective who searched Mr. Onitiri's car, and the detective who initiated the investigation into drug sales at Mr. Onitiri's dwelling. The chemist testified as an expert in the identification of controlled substances. The detective who initiated the investigation testified as an expert in the identification, packaging, and sale of controlled dangerous substances in Baltimore County.

Mr. Onitiri also testified during the trial. He explained that when he was arrested, he was driving his girlfriend back from Kentucky to move into a new apartment in Maryland. He said he had been driving with his girlfriend, his girlfriend's cousin, and the cousin's boyfriend. He testified that while he had consumed some of the drugs in the car,

none of them belonged to him. He also testified that the ammunition in his bedroom was not his and that he did not intentionally have a round of ammunition in the car.

Upon conclusion of the parties' closing arguments, the court found Mr. Onitiri guilty on all five counts.⁴

DISCUSSION

I. Mr. Onitiri's Contentions

Mr. Onitiri argues that his jury trial waiver violated his rights under the U.S. Constitution and the Maryland Declaration of Rights, and that it violated Maryland Rule 4-246.⁵ He argues that his waiver was constitutionally violative because it was not knowing or voluntary. Mr. Onitiri first argues that his waiver was not knowing because the trial court's instructions were confusing as to the burden of proof for a jury trial. While the trial court explained that during a bench trial, the State would have to prove Mr. Onitiri's guilt beyond a reasonable doubt, the court did not reiterate the same principle while explaining a jury trial. Mr. Onitiri thus claims that the trial court's instructions omitted the burden of proof for a jury trial and could have confused him by implying that the burden was different than for a bench trial. Because the court did not

⁴ On Count One, the court sentenced Mr. Onitiri to ten years with all but five suspended, and three years of supervised probation upon release. Count Two merged with Count One for the purposes of sentencing. Count Three carried an identical sentence to Count One, to run concurrently. Count Four merged with Count Three. On the final count, the court sentenced Mr. Onitiri to one year concurrent with the other sentences.

⁵ Mr. Onitiri does not articulate why he believes his waiver violated Rule 4-246; regardless, we do not reach this issue because it was not preserved.

adequately explain this aspect, Mr. Onitiri contends that he could not have knowingly waived his right to a jury trial.

Mr. Onitiri then argues that his waiver was not voluntary because the trial court did not ask him questions regarding his voluntariness. He contends that the proceedings had been marred with confusion up to the point of the waiver. This confusion, he claims, stemmed from not knowing whether he had an outstanding warrant in Texas, his previous request for a different attorney, and not being aware he would start trial that day. He says this confusion triggered the requirement that the trial court ask him questions about his voluntariness, such as whether he was being threatened and whether he was under the influence of alcohol or other substances. Because the court did not ask him such questions, Mr. Onitiri contends that he did not voluntarily waive his right to a jury trial.

II. Analysis

To begin, because Mr. Onitiri did not object contemporaneously during trial, we only consider the alleged violations of his constitutional right to a jury trial. While Maryland Rule 4-246 provides the procedure with which a trial court should comply when conducting a jury trial waiver colloquy, “to challenge a failure to comply with Rule 4-246 on appeal, . . . there must be an objection raised in the trial court.” *Hammond v. State*, 257 Md. App. 99, 119 (2023) (citing *Nalls v. State*, 437 Md. 674, 693 (2014)). On the other hand, no objection is required to preserve an appellate claim for a violation of a defendant’s constitutional right to a jury trial because a waiver of a constitutional right must appear affirmatively in the record. *See Biddle v. State*, 40 Md. App. 399, 407 (1978)

(citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Therefore, we consider Mr. Onitiri’s constitutional claim but not his claim under Rule 4-246. Nonetheless, Rule 4-246 may provide guidance on the constitutional sufficiency of a jury trial waiver. *See Aguilera v. State*, 193 Md. App. 426, 442 (2010) (explaining that the addition of the committee note to Rule 4-246 reflected a preference, not a mandate, that the waiver colloquy include questions as to the knowledge and voluntariness prongs).

A criminal defendant’s right to a jury trial is protected under the Sixth Amendment of the U.S. Constitution, as applied to the states through the Fourteenth Amendment, and under Articles 5, 21, and 24 of the Maryland Declaration of Rights.⁶ *See Abeokuto v. State*, 391 Md. 289, 316 (2006). A defendant may waive this right and elect a bench trial instead; however, such a waiver must be “an intentional relinquishment or abandonment of a known right or privilege.” *Aguilera v. State*, 193 Md. App. at 431 (internal quotations omitted). In other words, when a defendant waives his right to a jury trial, the court must “satisfy itself . . . that the defendant has some knowledge of the jury trial right before being allowed to waive it” and “that the waiver is not a product of duress or coercion[.]” *State v. Hall*, 321 Md. 178, 182-83 (1990). If a defendant’s jury trial waiver does not meet this requirement of being knowing and voluntarily, then a new trial is required. *Smith v. State*, 375 Md. 365, 381 (2003). Whether a defendant’s waiver

⁶ In line with our prior caselaw and because Mr. Onitiri does not contend otherwise, we interpret these state constitutional provisions in sync with the Sixth Amendment of the U.S. Constitution. *See Smith v. State*, 375 Md. 365, 377 (2003).

meets these requirements depends on “the facts and circumstances of each case.” *State v. Hall*, 321 Md. at 182. Therefore, when examining the defendant’s jury trial waiver, we consider the totality of the circumstances. *See Abeokuto*, 391 Md. at 320.

We conclude that Mr. Onitiri’s jury trial waiver did not violate his constitutional rights because it was both knowing and voluntary. Before his waiver, the trial court adequately explained Mr. Onitiri’s rights and what a jury and bench trial are so that he had some knowledge of the right he was waiving. The voluntariness requirement was met because there was no factual trigger that would have compelled the court to make a further inquiry into Mr. Onitiri’s voluntariness.

A. Knowing

First, to determine whether a jury trial waiver is knowing, we primarily examine the trial court’s colloquy. In conducting its colloquy, the trial court is not required to engage in a “fixed litany” of questions, *Kang v. State*, 393 Md. 97, 111 (2006), or a “fixed incantation[.]” *Smith v. State*, 375 Md. at 380 (internal quotations omitted). We also do not require that the defendant had “full knowledge” of his jury trial rights. *Kang v. State*, 393 Md. at 111; *State v. Bell*, 351 Md. 709, 720 (1998). We only require that, based on the facts and circumstances of each case, the defendant knows he is giving up his right to a jury trial and possesses a general knowledge of the nature of a jury trial. *State v. Bell*, 351 Md. at 720. For example, in previous cases, we have upheld the trial court’s knowledge finding even when the court did not explain the unanimity requirement

for a jury verdict, *id.* at 730, or when the court did not explain the details of the jury selection process, *State v. Hall*, 321 Md. 178, 183 (1990).

In analyzing the constitutional sufficiency of a defendant’s jury trial waiver, Maryland Rule 4-246 contains a Committee Note that provides guidance for a trial court’s colloquy. It explains that a court

should seek to ensure that the defendant understands that: (1) the defendant has the right to a trial by jury; (2) unless the defendant waives a trial by jury, the case will be tried by a jury; (3) a jury consists of 12 individuals who reside in the county where the court is sitting, selected at random from a list that includes registered voters, licensed drivers, and holders of identification cards issued by the Motor Vehicle Administration, seated as jurors at the conclusion of a selection process in which the defendant, the defendant’s attorney, and the State participate; (4) all 12 jurors must agree on whether the defendant is guilty or not guilty and may only convict upon proof beyond a reasonable doubt; (5) if the jury is unable to reach a unanimous decision, a mistrial will be declared and the State will then have the option of retrying the defendant; and (6) if the defendant waives a jury trial, the court will not permit the defendant to change the election unless the court finds good cause to permit the change.

Md. Rule 4-246 Committee Note.

The colloquy in this case was sufficient to give Mr. Onitiri some knowledge of a jury trial before he waived his right to one. The court advised Mr. Onitiri that he had a right to a trial by jury. *See id.* (“(1)”). It advised him that he had a choice between a jury trial and a bench trial. *See id.* (“(2)”). It also advised him that a jury would consist of 12 individuals from “what we call the motor and voter rolls of Baltimore County” and that “we’d all have a hand” in selecting the jurors. *See id.* (“(3)”). It explained that the jury needed to reach a unanimous verdict and that “[i]f they couldn’t come to a unanimous

decision, that would not be the end of it for you.” In fact, the State would be able to retry Mr. Onitiri if the jury did not reach a unanimous decision. *See id.* (“(4)” and “(5)”). Thus, the trial court included almost every part of the recommended questions from the Committee Note.

Mr. Onitiri contends that the court did not advise him that the jury could only convict him upon proof beyond a reasonable doubt. However, the court explained that in a bench trial, it could only convict upon proof beyond a reasonable doubt. The court then said that a jury “would sit and listen to the same evidence that I would listen to if you chose a trial in front of me.” By explaining the burden at the beginning and then saying the jury would listen to the same evidence, the defendant could have inferred that a jury trial also required the same burden of proof to convict. The court also later said that “[t]he *difference* is all 12 jurors would need to unanimously find you guilty or not guilty.” (emphasis added). Thus, the defendant knew that that was the difference between a bench trial and a jury trial and was again able to infer that the burden of proof did not differ between a bench trial and a jury trial.

Further, we have previously held that not explaining the burden of proof for a jury trial does not, by itself, make a jury trial waiver constitutionally deficient. In *Kang v. State*, our Supreme Court upheld a jury trial waiver even though the court did not explain the burden of proof to the defendant. 393 Md. at 109-10. Like that case, here, the trial judge’s colloquy included questions “as to the fundamentals of a jury trial, including that the defendant possessed the right to a trial by a judge or jury; a jury consists of 12

individuals who are chosen from the defendant’s peers; and a jury’s decision must be unanimous[.]” *Id.* at 111-12. Moreover, Mr. Onitiri “responded that he understood each of these questions.”⁷ *Id.* at 112.

In contrast, the colloquy in this case was far more informative than the colloquy for the jury trial waiver in *Tibbs v. State*, 323 Md. 28, 31-32 (1991). In that case, the colloquy was “devoid of any information about the nature of a jury trial.” *Id.* at 31. The defendant merely responded that he “understood that he ha[d] a right to a jury trial[and] that he [knew] ‘what a jury trial [was.]’” *Id.* 32. Thus, that colloquy was “woefully deficient[.]” *Id.* at 31. Conversely, here, the trial court explained, and Mr. Onitiri confirmed that he understood, many aspects of a jury trial, including the number of jurors, the unanimity requirement, how a jury is chosen, its difference from a bench trial, the possibility of a mistrial, and the State’s opportunity to retry Mr. Onitiri in the event of a mistrial.

Therefore, we conclude that Mr. Onitiri knowingly waived his constitutional right to a jury trial.

B. Voluntary

⁷ It is true that the trial court included most of its explanation about a jury trial in one long statement even though we have repeatedly stated our preference for byte-sized questions to ensure the defendant understands. *See Abeokuto v. State*, 391 Md. at 350 n. 23 (“[I]t might be a better approach to present such information to defendants in smaller intellectual ‘bytes’ and inquire discretely after each ‘byte’ or logical grouping of ‘bytes’ whether a defendant understands them.”). However, Mr. Onitiri does not challenge the jury trial waiver here for want of smaller “bytes,” and regardless, none of our cases have reversed a waiver on these grounds.

Second, when determining whether a waiver is voluntary, a trial court “is not required to ask questions regarding voluntariness, absent a factual trigger bringing into question the voluntariness of the waiver. Rather, . . . the court is permitted to make its voluntariness determination based on the defendant’s demeanor[.]” *Aguilera v. State*, 193 Md. App. at 442. Mr. Onitiri contends that there was “no conversation on the record that would give rise for the court to make any observations that would lead to an indicia of [voluntariness, and] the entirety of the interaction up to the point of the election was marred with confusion and uncertainty.” He argues that these circumstances should have triggered an inquiry into his voluntariness.

While it is true that the first time Mr. Onitiri conversed directly with the court the day of the trial was during the waiver colloquy, a court may determine a defendant’s voluntariness from his “demeanor, tone, facial expressions, gestures, or other indicia[.]” *State v. Hall*, 321 Md. at 183. Mr. Onitiri’s demeanor, tone, facial expressions, and gestures are not a part of the record before us, but neither is any indicator of involuntariness. We rely on the trial court to analyze these physical indicia, as the court was able to see Mr. Onitiri’s demeanor, and it can more readily feel the pulse of the trial. *Hammond*, 257 Md. App. at 124. Nevertheless, based on the record before us, Mr. Onitiri’s verbal responses during the colloquy were appropriate and did not indicate confusion or involuntariness. The words he used were responsive to the court’s questions. He stated that he understood his rights and that he did not have any questions. And when

asked if he wanted a jury trial or a court trial, he responded, “Court trial.” These factors all indicate that he was acting voluntarily.

To Mr. Onitiri’s contention that the proceedings up to that point were “marred with confusion and uncertainty[,]” the State cleared up the alleged uncertainty before Mr. Onitiri even decided to go to trial that day. Mr. Onitiri was concerned about an outstanding warrant in Texas and its potential effect on his sentence. However, at the beginning of the proceedings, the State reassured him that it had searched its system and had not found any outstanding warrants. The parties then proceeded, and the court conducted its jury trial waiver colloquy. Thus, by the time Mr. Onitiri waived his right to a jury trial, the State had cleared up any confusion surrounding the existence of an outstanding warrant in Texas.

The circumstances in Mr. Onitiri’s case are similar to those in *Hammond*. *Id.* at 123-24. In that case, the defendant was charged with drug-related offenses and had a criminal history of drug-related issues. *Id.* at 123. There, the defendant urged that his history with drugs was a sufficient factual trigger to require the trial court’s inquiry into his voluntariness. We clarified that “[p]rior involvement in drug-related offenses does not, by itself, constitute a factual trigger requiring a specific inquiry into the voluntariness of the waiver.” *Id.* at 124. Similarly, here, the only fact that Mr. Onitiri presents, which he argues triggered a specific voluntariness inquiry, was that there was some confusion surrounding the Texas warrant. That mere fact is not enough to trigger a specific inquiry into whether his jury trial waiver was voluntary. Additionally, unlike in *Hammond*, Mr.

Onitiri's claimed factual trigger was resolved when the State verified, before Mr. Onitiri waived his jury trial right, that Mr. Onitiri had no open warrants. Therefore, Mr. Onitiri is left with no facts that would have suggested to the court that his waiver may be involuntary.

Because there was no factual trigger requiring a specific voluntariness inquiry, Mr. Onitiri's challenge to the voluntariness of his jury trial waiver fails.

CONCLUSION

Mr. Onitiri's jury trial waiver was thus knowing and voluntary. Therefore, we affirm the judgments of the circuit court.

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