Circuit Court for Baltimore City
Case No. 121145002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1374

September Term, 2023

KHALIL MADDEN

v.

STATE OF MARYLAND

Reed,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: April 22, 2025

*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).

In the Circuit Court for Baltimore City, a jury convicted Khalil Madden, appellant, of one count of conspiracy to rob Jordan Taylor with a dangerous weapon, one count of conspiracy to rob Twila Taylor with a dangerous weapon, and one count of conspiracy to commit first-degree burglary.

Appellant presents the following questions for our review:

1. Did the circuit court err in permitting the State to play before the jury a video the State played the video of his police interrogation for the jury where he requested legal counsel?

2. Did the court err in imposing a term of incarceration of twenty years for conspiracy to commit burglary, and twenty years for conspiracy to commit armed robbery?

We shall hold that appellant's legal counsel question is not preserved for our review and shall affirm the judgments of the Circuit Court for Baltimore City. As to appellant's sentencing issue, the State concedes error and agrees the case should be remanded to the circuit court for resentencing.

I.

Appellant was indicted by the Grand Jury for Baltimore City on fifteen counts: first degree murder (Count 1); conspiracy to commit murder (Count 2); conspiracy to rob Jordan Taylor with a dangerous weapon (Count 3); use of a firearm in the commission of a crime of violence (Count 4); first degree assault of Twila Taylor (Count 5); second degree assault of Twila Taylor (Count 6); conspiracy to commit first degree assault of Twila Taylor (Count 7); attempted robbery of Twila Taylor with a dangerous weapon (Count 8); conspiracy to

rob Twila Taylor with a dangerous weapon (Count 9); first-degree attempted murder of Twila Taylor (Count 10); conspiracy to murder Twila Taylor (Count 11); use of a firearm in the commission of a crime of violence (Count 12); breaking and entering the dwelling of Jordan and Twila Taylor (Count 13); conspiracy to commit burglary in the first degree (Count 14); and wearing, carrying, and transporting a loaded handgun on their person (Count 15).

A jury convicted appellant of Count 3, conspiracy to rob Jordan Taylor with a dangerous weapon, Count 9, conspiracy to rob Twila Taylor with a dangerous weapon, and Count 14, conspiracy to commit burglary in the first degree. The court sentenced appellant to a term of incarceration of twenty years for Count 3 and a consecutive twenty year term of incarceration for Count 14. For sentencing purposes, the court merged Count 3 with Count 9, the second count of conspiracy to commit robbery with use of a dangerous weapon, imposing two separate sentences for the conspiracy convictions.

On November 5, 2019, three men broke into the townhome of Jordan and Twila Taylor. Jordan pressed himself against the door to prevent the men from breaking in while Twila called the police. The men fired multiple shots through the door and front window, shooting Jordan several times. He died later that night in the hospital.

The men entered the home while Twila was on the phone with emergency services. Two of the men wore white, hockey goalie-style masks, and the third person was unmasked. At least two of the men held handguns. The men demanded to know the location of the safe, but Twila, crying and screaming, told them to take her purse because there was

no safe. They took turns guarding her as they went through the house. The men left without taking anything when they realized police were on the way.

Baltimore City Police conducted an investigation that led them to arrest four suspects: Aaron Butler, Donta Holdclaw, Elease Frazier, and appellant. Appellant was arrested on a Maryland warrant in Lawrenceville, Georgia, in February of 2021, where he was in custody for a drunk and disorderly conduct charge.

Detective Reichenberg and Special Agent Plasha flew to Georgia to interview appellant before transporting him back to Baltimore. Detective Reichenberg advised appellant of his *Miranda* Rights and appellant agreed to speak with the officers. Early in the interview, one of the officers asked about the three other people arrested in the incident regarding the Taylors.

> "[UNIDENTIFIED OFFICER][1]: So then do you know any of the people who got arrested, not with you obviously, but as part of this whole thing? Have you talked to anybody back at home at all?
>
> [APPELLANT]: About what?
>
> [UNIDENTIFIED OFFICER]: About when three other individuals were arrested with—not with you, but with you as part of this whole investigation. Have you talked to anybody?
>
> [APPELLANT]: What about investigation, this shit now?
>
> [UNIDENTIFIED OFFICER]: Yeah.
>
> [APPELLANT]: I don't even –

[1] The transcripts do not indicate which officer is speaking during the interview, only that both Detective Reichenberg and Special Agent Plasha were present for the interview.

> [UNIDENTIFIED OFFICER]: Have you talked to mom or anybody at home?
>
> [APPELLANT]: For what? I don't know nothing about this shit."

During the interview, the officers showed appellant photographs of the three other individuals. Appellant denied knowing Butler and Holdclaw but admitted to knowing Elease Frazier as someone he used to date. As the officers continued pressing appellant about his connection to the arrested suspects, appellant became more adamant that he was not involved with the incident at the Taylor residence. Detective Reichenberg testified that he showed appellant a side-by-side photograph of the vehicle the officers knew appellant was in possession of and that same vehicle leaving the scene of the homicide.

The interview continued:

> "[UNIDENTIFIED OFFICER]: So that's what we're saying, if you lent the car to somebody—
>
> [APPELLANT]: I don't—
>
> [UNIDENTIFIED OFFICER]: —then that's something you should tell us because—
>
> [APPELLANT]: This thing, I don't even—I couldn't even remember the fucking—
>
> [UNIDENTIFIED OFFICER]: November the 5th, 2019.
>
> [APPELLANT]: November the 5th?
>
> [UNIDENTIFIED OFFICER]: About a month before we—about a month before we arrested you the first time. Man, if you lent the car, that's important. If you lent it to him, and that's why he—maybe that's—I don't know. Maybe she asked you, hey, do you have a car, he needs something, he'll give you

> money. That's not a crime. But if that's what happened, you need to let us know.
>
> [APPELLANT]: I don't know, man. Y'all like not going to get me hemmed up in no shit that I don't even know what the fuck going on, bro.
>
> [UNIDENTIFIED OFFICER]: But you already are.
>
> [APPELLANT]: Listen, I'm on this (indiscernible) you can't (indiscernible) shit because I haven't done anything. The only thing my (indiscernible).
>
> [UNIDENTIFIED OFFICER]: You're (indiscernible).
>
> [APPELLANT]: *I want my lawyer*. Because this shit ain't adding up. The only thing my prints is on is the fucking car, nothing else. What the fuck y'all tying me to a murder.
>
> [UNIDENTIFIED OFFICER]: Well, because we talked to him and we talked to him and we talked to her."

The interview continued with the officers attempting to gain an admission from appellant that he knew the other three individuals charged in the incident. Appellant maintained that he knew the woman, but he did not know the two men. When asked to explain his relationship to the woman, appellant stated "me and her get high together. . . . when I contacted her, I was more so on drugs, like weed and molly. I told her I go out with her." The officers asked appellant to explain why his car was at the scene of the robbery and murder, but appellant stated he did not know. He stated that he never let Ms. Frazier, or the other men, borrow his car. The officers continued as follows:

> "[UNIDENTIFIED OFFICER]: You send her a message (indiscernible) says this. Send me Yo's number. She immediately sends you [Aaron Butler's phone number]. A reasonable person—

> [APPELLANT]: Yeah
>
> [UNIDENTIFIED OFFICER]: —and this is not a big reach, a reasonable person would say and think, clearly they had a conversation—
>
> [APPELLANT]: Uh huh.
>
> [UNIDENTIFIED OFFICER]: —and they've talked about Yo.
>
> …
>
> [APPELLANT]: Hear me out. Just hear me out. Y'all basically trying to say based off of me saying, send Yo's number, she sent that, and then (indiscernible), you see what I'm saying, I had something to do with the murder. That don't even add up."

Appellant then requested an attorney a second time in the following exchange:

> "[APPELLANT]: I'm not (indiscernible) because I don't know about law, but I know for once, I know one, you feel me, I'm in some shit that I don't have nothing to do with it, so I'm just going to ask for my lawyer, bro.
>
> [UNIDENTIFIED OFFICER]: Okay. Okay. No problem.
>
> [APPELLANT]: That don't even add, man, like what the fuck.
>
> [UNIDENTIFIED OFFICER]: No, you're right, it doesn't.
>
> [APPELLANT]: I mean, how the fuck—
>
> [UNIDENTIFIED OFFICER]: That's why we're down here trying to figure it out because your story doesn't add up.
>
> [APPELLANT]: Look, I don't know what to tell you, all I can tell you was I was sleeping in the truck, you know what I'm saying—
>
> [UNIDENTIFIED OFFICER]: That truck was used in a homicide.

> [APPELLANT]: No, it was used, but that don't mean I was in it when it was used in this homicide, I don't know.
>
> [UNIDENTIFIED OFFICER]: We asked for your lawyer and we're done, okay."

The State offered appellant's statement into evidence at trial. Appellant's counsel objected to the State playing the video recorded statement because appellant was shackled to a chair for the duration of the interview. The court permitted the State to introduce appellant's statement, but to play the audio only, not to show the video portion. Defense counsel stated she had "no objection" to playing the entire audio portion. Appellant's counsel did not object to playing the remainder of the statement after the jury heard appellant ask for a lawyer during the interview. The State played the remainder of the statement until appellant asked for his lawyer a second time.

The jury returned guilty verdicts as indicated above and the court imposed sentence as indicated.

Appellant filed this timely appeal for our review.

II.

Appellant argues that the State violated appellant's (1) right to counsel and (2) his right of due process when, *at trial*, it played the part of his police interrogation that followed his initial request for an attorney." (Emphasis added). He argues, in a footnote in his reply brief, that "the State should not have been permitted to play the audio recording past the moment just prior to Madden's initial request for an attorney [and] Defense Counsel should

have objected on this ground." He argues that when he said, "I want my lawyer," the police should have ceased questioning immediately, consistent with the Sixth Amendment to the United States Constitution. After he requested counsel, police continued to question him and, according to appellant, gained the most important evidence against him for the conspiracy charge. Appellant concedes he did not object below to the audio portion of the interview, but he argues that he did not waive this claim because right to counsel is a fundamental right, requiring a knowing and voluntary waiver.

Appellant's second argument is that the State violated his due process right to a fair trial when the State presented to the jury his statement to the police after he requested counsel, essentially violating his United States Constitutional Fifth Amendment rights. Appellant argues that because the jury heard appellant assert his right to counsel multiple times, his right to a fair trial was violated. He argues that the invocation of the right to counsel raises the same concerns as asserting the right to remain silent. Again, although he did not object below, he argues that this claim is not waived because he did not knowingly, voluntarily, or intelligently waive this right.

As to his sentence, appellant asserts that the court violated his Fifth Amendment right to be free from double jeopardy by sentencing him to consecutive terms of twenty years for conspiracy to commit burglary and twenty years for conspiracy to commit armed robbery because there was only one conspiracy.

Preliminarily, the State raises a preservation argument, maintaining that appellant's objections on appeal to the second half of his statement to the police are not preserved for

our review because, not only did he fail to object below, but his counsel stated affirmatively that she had no objection to the admission of the audio version of the interview.

The State notes that appellant does not ask this Court to review his constitutional claims under "plain error review." In its brief, however, the State addresses why "plain error" review is not appropriate in this case. As to appellant's sentencing issue, the State concedes that only one sentence may be imposed for a single common law conspiracy, no matter how many crimes were the object of the conspiracy. The State concedes that this case should be remanded to the trial court to impose a single conspiracy sentence.

III.

Before we discuss preservation and waiver, we make clear that the waiver discussion in no way supports a view that custodial statements by a defendant following *Miranda* warnings and after a request for counsel are admissible against a defendant at trial. We hold only that an objection to the admissibility of those statements, either at trial or by pre-trial motion is required to preserve the issue for appellate review.

We address first preservation and waiver. Ordinarily, this Court will not decide any issue unless it plainly appears in the record to have been raised in or decided by the trial court. Md. Rule 8-131(a). We agree with the State that the constitutional issues of whether

the State violated appellant's Sixth Amendment right to counsel are unpreserved for our review. Appellant never raised this issue below.[2]

Appellate review is limited to preserved issues as "a matter of basic fairness to the trial court and to opposing counsel, as well as being fundamental to the proper administration of justice." *In re Kaleb K.*, 390 Md. 502, 513 (2006). Generally, when counsel fails to make a "contemporaneous objection or expression of disagreement, the trial court is unable to correct, and the opposing party is unable to respond to any alleged error in the action of the court." *Lopez-Villa v. State*, 478 Md. 1, 13 (2022).

Appellant concedes that defense counsel did not object below to the playing before the jury the audio recorded statement of his client, and that counsel stated affirmatively that she had "no objection" to playing the audio statement before the jury. Appellant's argument is two-fold: that he was denied his right to counsel "because police were required to cease interrogating him at his first request for counsel, and it therefore follows that any statements made by him after his initial request for counsel were unlawfully obtained;" and, second, that the court erred and violated due process in allowing the jury to hear that appellant invoked his right to counsel by asking for a lawyer and electing to remain silent. He appears to be arguing before this Court that, because his Sixth Amendment right to counsel is a fundamental right, and that appellant told the detectives that he wished a lawyer, but the

[2] In appellant's boilerplate omnibus motion filed pre-trial, he never raised the issue that the second half of the interview should not be received into evidence on the ground that the State violated his right to counsel. In addition, it does not appear from the record before us that appellant litigated pre-trial a motion to suppress the statement.

officers continued to interrogate him anyway, there was no waiver, forfeiture or non-preservation of the issue because appellant did not knowingly, and voluntarily waive this right. In essence, appellant seems to be arguing a *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), knowing and intelligent waiver[3] of his right to counsel is required before the matter may be deemed waived. As we discuss further *infra*, appellant here does not explain when or where this knowing and intelligent waiver should have occurred.

Not every violation of a fundamental right is preserved for appellate review. Failing to object below and not complying with procedural rules are grounds for lack of preservation of some fundamental rights. *Curtis v. State*, 284 Md. 132, 145-47 (1978) (addressing numerous cases involving a variety of fundamental rights and concluding that "whether one is precluded from asserting a constitutional right because of what may have occurred previously, even though the failure was not 'intelligent and knowing,' depends upon the nature of the right and the surrounding circumstances"). Our cases make clear a contemporaneous objection to the admission of evidence is required, and simply because an asserted right is derived from the Maryland Constitution or the United States Constitution, or is regarded as a "fundamental" right, does not necessarily make the "intelligent and knowing" standard of waiver applicable.[4] Our jurisprudence in Maryland and in our sister states supports this conclusion. *See, e.g.*, *Curtis*, 284 Md. at 147 ("A

[3] In *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), the United States Supreme Court defined waiver as "an intentional relinquishment or abandonment of a known right or privilege."

[4] We need not address the difference between forfeiture and waiver of a right as it bears on the exercise of our discretion under plain error because appellant does not argue plain error review here.

defendant may forego a broad spectrum of rights [including those considered fundamental] which are deemed to fall within the category of tactical decisions by counsel or involve procedural defaults."); *Starr v. State*, 997 So. 2d 262, 266 (Miss. 2008) (holding that defendant's failure to object to the admission of evidence of his statements made to police constituted waiver of his ability to bring a Fifth Amendment claim on appeal); *State v. Vick*, 632 N.W.2d 676, 684-85 (Minn. 2001) (holding that a failure to object to the admission of evidence generally constitutes waiver of the right to appeal on that basis unless admitting that evidence constituted plain error and affected the defendant's substantial rights); *State v. Singleton*, 28 P.3d 1124, 1129 (N.M. 2001) ("An attorney's tactical decision is particularly accepted when the defendant is present, aware of the circumstances, and remains silent."); and *State v. Sweet*, 280 A.3d 1243, 1256 (Conn. App. Ct. 2022) (holding that defense counsel waived any Sixth Amendment confrontation clause claims by failing to object to the admission of property report and statement as full exhibits).

For example, an individual may waive certain Fourth Amendment rights without a showing of a knowing and intelligent waiver. *See Schneckloff v. Bustamonte,* 412 U.S. 218, 241 (1973) (holding that where a defendant voluntarily consents to a search, the defendant relinquishes any Fourth Amendment rights despite the absence of a knowing and intelligent waiver). A defendant may waive the constitutional right not to be tried before a jury in prison garb. *Estelle v. Williams*, 425 U.S. 501, 512 (1976) (holding that a defendant must affirmatively assert the right to not be tried in prison clothes to avoid waiver). We have made it abundantly clear that "'[e]ven errors of Constitutional dimension may be waived

by failure to interpose a timely objection at trial.'" *Robinson v. State*, 410 Md. 91, 106 (2009) (quoting *Taylor v. State,* 381 Md. 602, 614 (2004)). *See, e.g.*, *Walker v. State,* 338 Md. 253, 262-63 (1995) (citing Rule 8–131(a) and holding that issues related to the denial of due process and denial of the Sixth Amendment right to counsel during pre-trial proceedings would not be considered because they were not properly raised below), *cert. denied,* 516 U.S. 898 (1995). In many other circumstances, the United States Supreme Court has held "that a criminal defendant was precluded from asserting a constitutional right because of prior action or inaction, despite the absence of a waiver within the meaning of *Johnson v. Zerbst* and *Fay v. Noia*." *Curtis*, 284 Md. at 147. *See also Wainwright v. Sykes*, 433 U.S. 72, 86-87 (1977) (holding a contemporaneous objection to the admission of a defendant's confession at trial required for review in federal habeas proceeding); *United States v. Washington*, 431 U.S. 181, 186-88 (1977) (holding that respondent's decision to testify before a grand jury and incriminate himself despite receiving comprehensive warnings from the prosecutor does not violate the Fifth Amendment).

In that regard, we have recognized that certain fundamental rights do require a knowing and intelligent waiver from a defendant. *See, e.g.*, *Zerbst*, 304 U.S. at 464 (Sixth Amendment right to trial counsel); *Machibroda v. United States*, 368 U.S. 487, 493 (1962) (rights surrendered by a guilty plea); *Green v. United States*, 355 U.S. 184, 191 (1957) (rights under double jeopardy clause); *Emspak v. United States*, 349 U.S. 190, 195 (1955) (self-incrimination in congressional hearing); and *Adams v. United States*, 317 U.S. 269, 275 (1942) (right to trial by jury). The right to a jury trial is an example of a fundamental

right that cannot be waived by procedural default but only through "the exercise of a free and intelligent choice[.]" *See Curtis*, 284 Md. at 143 (cleaned-up). *See also Walther v. Sovereign Bank*, 386 Md. 412, 442 (2005) (holding that although the right to a jury trial is fundamental, parties can contractually waive their right to a jury trial when a "knowing and intelligent" waiver exists). Here, notably, appellant fails to tell us how he anticipates a knowing and intelligent waiver could possibly have occurred when he only objects to the video portion of the statement, and affirmatively states the audio may be played to the jury.

We explained in *Huggins v. State*, 479 Md. 433, 446-47 (2022), that a defendant claiming an unlawful search and seizure, a constitutional Fourth Amendment violation (and a fundamental right), must file a pretrial motion in conformity with Rule 4-252(a) and the failure to do so results in a waiver of the issue. Rule 4-252(a)(3), (g)(1). Ordinarily, such motions must be in writing and filed within 30 days after the earlier of either defense counsel's entry of appearance or the defendant's first court appearance under Rule 4-213(c). Rule 4-252(b), (e). The motion must "state the grounds upon which it is made and shall set forth the relief sought." Rule 4-252(e). Motions must also be supported with "a statement of points and citation of authorities." *Id.* Under ordinary circumstances, a general omnibus motion will not usually preserve an issue for appellate review. *See Denicolis v. State*, 378 Md. 646, 660 (2003) (concluding that a Rule 4-252 motion which contains "little or no articulated legal or factual underpinnings . . . is not what the Rule anticipates and is not to be encouraged").

In contrast, objections to the admission of evidence and any other rulings at trial are governed by a different rule: Rule 4-323. Under this Rule, objections to the admission of evidence at trial must be made when the evidence is offered for admission. Rule 4-323(a). The failure to timely object results in a waiver. *Id.*

Here, defense counsel did not object to the portion of appellant's police interview, including his initial request for an attorney and his subsequent statements. Moreover, defense counsel stated she had "no objection" when the State offered the audio portion of the interview. While appellant argues that trial counsel's failure to object to these admissions into evidence of appellant's request for counsel and all subsequent statements is insignificant in light of the fundament right at issue, we disagree.

Appellant's general omnibus motion does not save appellant's claim. To preserve his issues for appellate review, appellant needed to object below when the State offered the evidence, and to avoid his affirmative assent to the admission of the evidence.

Before we leave appellant's Fifth and Sixth United States Constitutional claims, let us examine them a little deeper, and beyond a preservation analysis. Appellant asserts that Maryland law enforcement continued to interview him while he was in custody in Georgia, and only ceased after his second request for an attorney. Because that statement was introduced into evidence at trial and included his request for counsel and his assertion of his right to remain silent, appellant argues he was deprived of his fundamental right to counsel and violated his protection against self-incrimination. We assume he is arguing before this Court that he was deprived of his right to counsel when the police were

interviewing him because he was represented by counsel at his trial. In his view, his failure to object to the evidence at trial did not waive either of those constitutional protections. If his factual assertions are correct, if appellant had wished to exclude his statement at trial, and had appellant followed the procedural rules and litigated the legality of his statement, he would have been entitled to have the statements excluded. That is his remedy for any *Miranda* violation. *Cf. Vega v. Tekoh*, 597 U.S. 134, 141-58 (2022). His remedy for any deprivation of counsel during his police interview is the exclusion of any statements illegally obtained by law enforcement. And, as we have said, for whatever reason, his counsel waived that remedy at trial.

IV.

We turn now to appellant's sentencing argument: whether the trial court erred in imposing two separate sentences for the conspiracy convictions. It is well settled in Maryland that only one sentence may be imposed for a single common-law conspiracy. *Mason v. State*, 302 Md. 434, 445 (1985) (holding that a "conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy").

The State concedes error, agreeing that it only proved one conspiracy, and we agree. As in *Somers v. State*, 156 Md. App. 279, 317 (2004), where Somers engaged in a single conspiracy with more than one criminal objective, Somers was subject only to a conviction and sentence for a single count of conspiracy, not multiple. There, the Court vacated his

conviction and sentence for conspiracy to commit felony theft and affirmed his conviction for conspiracy to commit robbery with a dangerous weapon. *Id.* at 318. Given the State's concession and our agreement, we shall vacate appellant's conviction and sentence for Count 14, conspiracy to commit burglary in the first-degree.

JUDGMENT OF CONVICTION FOR COUNT 14 OF CONSPIRACY TO COMMIT BURGLARY IN THE FIRST-DEGREE VACATED; JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 2/3 BY APPELLANT, 1/3 BY THE STATE.