

Circuit Court for Anne Arundel County
Case No.: C-02-CR-19-001293

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1907

September Term, 2019

CHARLES KENNETH RATTLEY, JR.

v.

STATE OF MARYLAND

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 21, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following trial in the Circuit Court for Anne Arundel County, a jury found Charles Kenneth Rattley Jr., appellant, guilty of theft between \$1,500 and \$25,000, theft and theft scheme between \$25,000 and \$100,000, possession of forged private documents, issuing a counterfeit check, attempted theft of over \$100,000, and obtaining U.S. currency between \$25,000 to \$100,000 by issuing a bad check. The court sentenced appellant to an aggregate term of five years' imprisonment with all but 60 days suspended in favor of three years' probation, and a \$5,000 fine.¹ The court also ordered appellant to pay \$44,937.36 in restitution.

On appeal, appellant contends that the trial court erred by accepting appellant's waiver of his right to testify. For the reasons explained below, we shall affirm.

BACKGROUND

Because the facts supporting appellant's convictions are largely, if not entirely, immaterial to the resolution of the single question he presents, we only briefly address them. The gist of the State's evidence at trial showed that appellant deposited a bad check for \$186,000 into the Glen Burnie Branch of Capital One Bank. The next day he fraudulently obtained, from two different branches of the same bank, two certified checks totaling \$45,000.

Appellant represented himself at trial. He did not testify and he called no witnesses.

¹ Specifically, the court imposed the following concurrent sentences: five years, with all but sixty days suspended, and a \$5,000 fine for theft scheme between \$25,000 and \$100,000; three years, all suspended, for issuing a counterfeit check; and five years, all suspended, and a \$10,000 fine, also suspended, for attempted theft over \$100,000. The court merged the remaining offenses for sentencing.

DISCUSSION

As noted above, appellant claims that the circuit court erred in accepting his waiver of his right to testify. According to appellant, his waiver was not made knowingly and intelligently because the circuit court misadvised him about his right to testify, or not testify. The circuit court twice addressed appellant's Fifth Amendment rights on the record. Shortly before opening statements, the following occurred:

THE COURT: ...Mr. Rattley, of course, I will advise you, I am going to advise you now and I will also advise you again prior to the beginning of your case if you are going to put on a case, but you have a Fifth Amendment right against self-incrimination.

It's up to you if you choose to exercise that. If you do not testify then I will certainly instruct the jury that they cannot make any negative inference from that. That is your Fifth Amendment right against self-incrimination and it is yours and yours alone to exercise.

APPELLANT: Yes, I will not be testifying, Your Honor.

THE COURT: Okay. Well, you can – You are

APPELLANT: I understand.

THE COURT: All right. But I just want to make sure that you understand that.

APPELLANT: Yes. Yes.

After the State rested, the court once again discussed with appellant, on the record, his rights under the Fifth Amendment:

THE COURT: I don't know if I advised you before. You have the absolute right not to testify (inaudible 09:17:15). (Inaudible 09:17:20) testify, I will advise the jury that they can not hold that against you (inaudible 09:17:19) testify (inaudible 09:17:26) chance to testify, the State's

Attorney (inaudible 09:17:30) cross examine you (inaudible 09:17:33) questions (inaudible 09:17:38) certain prior convictions (09:17:40) be any priors that you would be inquiring (inaudible 09:17:42).

STATE: (Inaudible 09:17:41).

THE COURT: Would there be any prior convictions?

STATE: No.

THE COURT: Okay. All right. (Inaudible 09:17:48) to testify?

APPELLANT: I'm going to have to testify, Your Honor. But I will – I'm going to make a motion and I'd like to do it in the Court.

After appellant moved for judgment of acquittal, and after he unsuccessfully attempted to call a witness he had not subpoenaed, he rested his case without any further discussion of his right to testify, or not testify.

In *Morales v. State*, 325 Md. 330, 336 (1992), the Court of Appeals explained the role of a trial court when advising an unrepresented defendant about their Fifth Amendment rights:

Unrepresented defendants can not be presumed to have been advised of, or know of, the existence of the constitutional right to remain silent or to testify in their own defense since they do not have attorneys to so inform them. Without knowledge of a right, a defendant can not waive it. Therefore, the trial court has an affirmative duty, albeit a limited one, to inform an unrepresented defendant of these rights.

Id. at 336 (internal citations omitted).

Morales instructs that if the advice given by the circuit court to an unrepresented criminal defendant about their Fifth Amendment rights is both (1) incorrect, and (2) affects the decision to testify, then the defendant's waiver of his constitutional right to testify or

to remain silent is invalid. *Id.* at 339. We agree with the State that neither of those two conditions are met here.

We see nothing erroneous in the court’s advisement. The court merely informed, as it was required to do under the teachings of *Morales*, appellant of his right to remain silent, and that it was appellant’s decision to testify: “It’s up to you if you choose to exercise that.” The court correctly explained that it would instruct the jury not to consider appellant’s decision not to testify. The court did not advise appellant of the consequences of testifying, and it did not emphasize remaining silent over testifying. In an apparent effort to assist appellant in making a knowing and intelligent decision to testify or remain silent, the court explored with the State whether it intended to impeach appellant with any prior offenses if he took the witness stand. The State had no such intentions.

As can be seen from the colloquies noted above, at the conclusion of the first colloquy, appellant said he would not be testifying. Then, at the conclusion of the second colloquy, appellant said that he would be testifying. Next, without any more input from the court, appellant chose not to testify. Under those circumstances, the record simply does not reflect that the court said anything that affected appellant’s decision to exercise his right to remain silent.

We therefore reject appellant’s argument that the circuit court erred by over-emphasizing the risks of testifying to the point that it discouraged appellant from taking the witness stand.

Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**