

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2012

September Term, 2014

MATTHEW WARREN BEARD

v.

STATE OF MARYLAND

Woodward,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: October 9, 2015

*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.

Matthew Beard, appellant, was convicted at a bench trial in the Circuit Court for St. Mary's County of second-degree rape and subsequently sentenced to 20 years of imprisonment. Appellant asks one question on appeal: Did the trial court err in accepting his jury trial waiver pursuant to Md. Rule 4-246 because he was not advised that he could participate in the jury selection process? For the reasons that follow, we shall affirm the judgment.

FACTS

Because appellant's sole question on appeal concerns a procedural issue about the waiver of his right to a jury trial, we need only relate the following colloquy that occurred at the pre-trial hearing where the waiver was discussed:

THE COURT: All right. The next question I ask for logistics purpose is, you have an absolute constitutional right to a jury trial; and/or you can choose a court trial. Now, consult with your attorney and tell me which one you would prefer to have.

[APPELLANT]: Yes, your Honor.

[APPELLANT'S ATTORNEY]: We're prepared to go forward with a court trial, your Honor.

THE COURT: All right. Do you understand what a jury is, sir?

[APPELLANT]: Yes, sir, I do.

THE COURT: All right. The reason I'm going to ask you these questions is when you waive jury, once you have waived your right to a jury, you cannot come back and change your mind. Do you understand?

[APPELLANT]: Yes, your Honor.

THE COURT: All right. So are you under the influence of any drug, alcohol, or narcotic affecting your decision-making here today?

[APPELLANT]: No, your Honor.

THE COURT: Do you read and write the English language, sir?

[APPELLANT]: Yes, I do, your Honor.

THE COURT: How far did you go in school?

[APPELLANT]: I got my GED, your Honor.

THE COURT: Do you understand what is going on here today?

[APPELLANT]: Yes, I do.

THE COURT: Do you understand a jury is 12 people chosen from the voter registration and motor vehicle records for St. Mary's County, Maryland; and that those 12 people would have to unanimously find beyond a reasonable doubt that you are guilty beyond that doubt? Do you understand that?

[APPELLANT]: Yes, your Honor.

THE COURT: By waiving that right to have a jury trial, what you are doing is you are taking it out of the hands of those 12 people, and those 12 people to find it unanimous. Do you understand that, sir?

[APPELLANT]: Yes, I do.

THE COURT: You understand that once you waive that right, that that right cannot be brought back at a later date; you can't change your mind once you have waived it today. Do you understand that?

[APPELLANT]: Yes, your Honor.

THE COURT: Are you giving up this right voluntarily?

[APPELLANT]: Yes, I am.

THE COURT: You do understand what the word voluntary means?

[APPELLANT]: Yes, I do.

THE COURT: Has anyone threatened or intimidated you to make you give up this right?

[APPELLANT]: No, your Honor.

THE COURT: Are you doing this because you believe it to be appropriate, sir?

[APPELLANT]: Yes, I do, your Honor.

THE COURT: Do you believe it to be in your best interest?

[APPELLANT]: I do, your Honor.

THE COURT: You do understand that you have had, I am sure, conferences and strategies with your attorney, but this decision is solely yours. He can advise you as to strategy and decision-making, but only you make the final distinction. Do you understand?

[APPELLANT]: I do, your Honor.

THE COURT: And your request is to waive jury and have a court trial in front of this member of the bench?

[[APPELLANT]: Yes, I do, your Honor.

THE COURT: All right. Madam Clerk, I do find that he knowingly and understandingly has waived his right to have a jury.

Appellant was subsequently tried and, as related above, convicted of second-degree rape and sentenced to 20 years of imprisonment.

DISCUSSION

Appellant argues on appeal that the trial court erred when it accepted his waiver of his right to a jury trial pursuant to Md. Rule 4-246. Appellant argues that his waiver was not

“knowing” because he was not advised by the court that he could participate in selecting the 12 jurors on his jury panel. The State argues that appellant was sufficiently apprised of the jury process to render his waiver valid. We agree with the State.

Md. Rule 4-246, titled, “**Waiver of jury trial – Circuit court**” provides, in pertinent part:

(b) Procedure for acceptance of waiver. A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State’s Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.

“Whether there has been an intelligent waiver of the jury trial right depends upon the facts and circumstances of each case.” *Smith v. State*, 375 Md. 365, 380-81 (2003)(citations omitted). *See also Powell v. State*, 394 Md. 632, 639, *aff’d*, 394 Md. 632 (2006), *cert. denied*, 549 U.S. 1222 (2007). “While no fixed litany need be followed in complying with [the Rule], the trial court must satisfy itself that the waiver is not a product of duress or coercion, and further that the defendant has *some knowledge* of the jury trial right before being allowed to waive it.” *Tibbs v. State*, 323 Md. 28, 31 (1991)(citing *State v. Hall*, 321 Md. 178, 182-83 (1990))(emphasis added). In determining whether the defendant has some knowledge, we look to the totality of the circumstances of the waiver. *Ray v. State*, 206 Md. App. 309, 345 (2012), *aff’d* 435 Md. 1 (2013).

Maryland appellate courts have upheld several cases in which the jury trial waivers contained no mention that the defendant could take part in the jury selection process. For example, in *State v. Hall, supra*, the following transpired:

[THE COURT]: Mr. Hall, you have the right to a trial by a jury where twelve people would hear the evidence. After they hear the evidence, they would all have to agree upon their verdict. They would all have to be convinced beyond a reasonable doubt that you are guilty before a jury would find you guilty. Do you want to be tried by a jury or do you want to waive your right to a jury trial and be tried by the Court, in which event I will hear the evidence and have to be convinced beyond a reasonable doubt before I would find you guilty. Do you want a jury trial or do you want to waive your right to a jury trial and be tried by the Court?

THE DEFENDANT: Tried by the Court.

Hall, 321 Md. at 180 (brackets added, quotation marks omitted). On appeal to our Court, we found that the advice was insufficient to show that Hall understood the right he was waiving. The Court of Appeals, however, reversed our decision, finding that the advice given by the trial court was sufficient. In *Walker v. State*, 406 Md. 369, 374-75 (2008), the Court of Appeals upheld the defendant's trial waiver as "knowing" even though he was not advised, among other things, that he could participate in choosing the 12 jurors. In *Dedo v. State*, 105 Md. App. 438, 448-451 (1995), *rev'd on other grounds*, 343 Md. 2 (1996), we upheld the defendant's jury trial waiver as knowing even though the trial court did not advise appellant that he could take part in the jury selection process.

Appellant attempts to cast the trial court's advice to him as "incorrect," highlighting that the Committee note to the rule states that the trial court "should seek to ensure that the

defendant understands that . . . a jury consists of 12 individuals . . . seated as jurors at the conclusion of a selection process in which the defendant, the defendant’s attorney, and the State participate[.]” Appellant, however, goes too far. The trial court’s information was in no way incorrect, for the Committee notes are not the law. *See* Md. Rule 1-201(e)(Committee notes are not part of the rules), and *McKenzie v. State*, 407 Md. 120, 126 (2008)(Committee notes are not the law). Here, the advice given appellant was substantially more explicit than that approved by the Maryland appellate courts in *Hall*, *Walker*, and *Dedo*, where jury trial waivers were upheld even though the defendant was not informed of his right to participate in the jury selection process.¹ Accordingly, under the circumstances presented, we shall affirm the judgment.

**JUDGMENT AFFIRMED.
COSTS TO BE PAID BY
APPELLANT.**

¹ We note that *Walker* was decided after the rule was amended to add the particular Committee note. The rule was amended on December 7, 2007; the rule became effective on January 1, 2008; and *Walker* was decided almost ten months later on October 24, 2008.