Circuit Court for Cecil County
Case No.C-07-CR-22-000311

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2047

September Term, 2022

RYAN WILLIAM KAISER

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Kenney, James A., III,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Wells, C.J.

Filed: November 21, 2023

*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 Maryland Rule 1-104(a)(2)(B).

After a bench trial in the Circuit Court for Cecil County, the court convicted appellant Ryan Kaiser of eight counts of possession of child pornography. Later, the court sentenced Kaiser to five years of incarceration with all but twelve months suspended, followed by five years of supervised probation, and a $2,000 fine.

The issue in this appeal centers on the effectiveness of Kaiser's jury trial waiver. Soon after the bench trial commenced, the presiding judge, with defense counsel's assistance, questioned Kaiser about waiving his right to a jury trial. After the waiver colloquy, the court confirmed on the record that Kaiser "waived his rights to a jury trial." Kaiser timely appealed and submits the following question for our review:

1. Did the circuit court fail to ensure that Appellant's waiver of his right to a jury trial was knowing and voluntary [under Maryland Rule 4-246]?

For the reasons we will discuss, we conclude that the circuit court did not err in accepting Kaiser's waiver as knowing and voluntary. The record reflects that Kaiser had "some knowledge" of the right he was waiving as required under Rule 4-246. Additionally, there was no clear factual trigger in the record that would have required a specific voluntariness inquiry. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of Kaiser's bench trial, September 21, 2022, the parties introduced themselves and the prosecutor announced on the record that they "were ready to proceed to a bench trial." The parties waived opening statements and the trial began with the State calling its first witness. After the State began examining the witness (and approximately eight minutes after the case was called), the court called a sidebar and notified defense

counsel that she needed to qualify Kaiser on how he was proceeding. The following colloquy occurred:

> [DEFENSE COUNSEL]: Okay. Mr. Kaiser, because of the nature of the charges against you and your exposure to incarceration, you are entitled to a trial by jury if you want one. A trial by jury is different from a bench trial in that instead of having your case judged by just Judge Beck, we would participate in a process where a pool of people would be selected at random from the motor vehicle and voter registration rolls of Cecil County, Maryland. They would all be over the age of 18, United States citizens, living in Cecil County.
>
> We would participate in a process where 12 of those individuals would be selected to serve as a jury, and instead of only convincing the judge of your guilt, the State would be burdened with proving your guilt to each of the 12 individuals on the jury. They would have to reach a unanimous verdict, and if they did not reach a unanimous verdict, that would cause a mistrial, and the State could retry the case again as often as they wanted until they got a verdict that was unanimous.
>
> We have discussed the pros and cons regarding bench trials and jury trials, and we did come to an agreement about how we wish to proceed. And so do you wish to waive your right to a trial by jury and proceed by way of a bench trial today?
>
> THE DEFENDANT: When would a jury trial happen?
>
> [DEFENSE COUNSEL]: Well, it would have happened today. But we have —
>
> THE COURT: Understand you've waived your rights to a jury trial.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: The jury was not called in as a result.
>
> [DEFENSE COUNSEL]: So what His Honor's asking us to do is just to affirm on the record that we made this decision to waive the jury trial. But we did make that decision—
>
> THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: —previously. So we're just—what His Honor is looking for is confirmation that that happened.

THE DEFENDANT: Correct.

[DEFENSE COUNSEL]: Do you agree that that happened?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Okay.

THE COURT: And so he's waived his rights to a jury trial. He knows what the penalties are for various crimes?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Five years and $2,500 fine on each of eight counts that we're proceeding against when you—Do you have any questions of me before we proceed?

THE DEFENDANT: Not that I can think of, sir.

[DEFENSE COUNSEL]: If you have any questions, you can address them to me when we return to the trial table.

THE COURT: All right. Thank you.

[DEFENSE COUNSEL]: Thank you.

After hearing counsels' arguments, the court convicted Kaiser on all counts.

STANDARD OF REVIEW

Appellate review of decisions tried without a jury is subject to Md. Rule 8-131: "[The appellate court] will not set aside the judgment of the trial court on the evidence unless clearly erroneous." This standard recognizes that it is "the duty of the trial judge to make a determination after an examination of the defendant, taking into consideration the

judge's personal observations of the defendant and the defendant's responses to questions posed." *Valonis v. State*, 431 Md. 551, 567 (2013).

DISCUSSION

The procedure for determining whether a criminal defendant in the circuit court shall be tried without a jury is set forth in Maryland Rule 4-246:

> **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.

Kaiser contends that these procedural requirements were not satisfied because his wavier was neither knowing nor voluntary. We assess these two requirements separately.

A. Kaiser Knowingly Waived His Right to a Jury Trial.

1. Parties' Contentions

Kaiser's assertion that his waiver was not knowing rests on defense counsel's failure to advise Kaiser that he would be presumed innocent in a jury trial, and that the State would have to convince the jurors of his guilt beyond a reasonable doubt to convict him. Kaiser maintains that in order to constitute a knowing waiver, defendants are required to be informed of either the presumption of innocence or the State's burden of proving guilt beyond a reasonable doubt. When a defendant has prior involvement with the criminal justice system, Kaiser contends that those requirements are no longer necessary because it can be assumed that the defendant knows specifics about jury trials. Because Kaiser claims

he has no prior experience with the criminal justice system, he was not provided sufficient information about a jury trial to constitute a knowing waiver.

The State asserts that the standard for finding a knowing waiver is whether the defendant had "some" knowledge of the rights he was giving up and the distinction between a jury trial and bench trial. According to the State, there is no requirement that a defendant be specifically advised of the reasonable doubt standard or his presumption of innocence. Additionally, the State contends the record shows that Kaiser and his counsel previously discussed waiving the right to a jury trial sometime before trial. Finally, the State challenges the validity of Kaiser's claim that he has no prior involvement with the criminal justice system. During the sentencing hearing, the prosecutor mentioned that Kaiser has "a minor record," but then goes on to say "[Kaiser] has no priors, no other issues with sex crimes."

2. Analysis

In determining whether a criminal defendant has waived their right to a try by jury, the proper inquiry is whether the defendant had "some knowledge" of the rights that they were relinquishing. We hold there are sufficient facts in the record indicating Kaiser had some knowledge about waiving his right to a jury trial. Here, Kaiser's defense counsel provided him with sufficient information about the distinction between a jury trial and a bench trial during the waiver colloquy, Kaiser agreed that he had previous conversations with his attorney about the pros and cons between the two types of trials, and Kaiser had no questions for the court about the jury trial waiver.

Waiver of a constitutional right requires "an intentional relinquishment or abandonment of a known right or privilege." *Robinson v. State*, 67 Md. App. 445, 454 (1986) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Since its revision in 1982, Md. Rule 4-246 (formerly Rule 735[1]) is interpreted as no longer requiring a "fixed litany" of statements about a jury trial as a precondition of finding the defendant's waiver "knowing." *Abeokuto v. State*, 391 Md. 289, 320 (2006) ("[T]he trial court is not required to engage in a fixed litany or boilerplate colloquy with a defendant."). Rather, the defendant's knowledge is assessed according to the circumstances of the waiver to decide whether the defendant sufficiently had "some knowledge" about a jury trial. *See State v. Hall*, 321 Md. 178, 182 (1990) ("[W]hether there has been an intelligent waiver of the jury trial right depends upon the facts and circumstances of each case."); *Ray v. State*, 206 Md. App. 309, 353 (2012) ("A defendant's waiver of the right to a jury trial is knowing where the record shows that the defendant … has "some knowledge" of what a jury trial entails.").

The questions asked in a Rule 4-246 colloquy "will depend upon the facts and circumstances," and "courts need not engage in a 'fixed litany'" of statements so long as

[1] Revised Rule 735(b) contained substantially similar language as subsequent Rule 4-246, providing the following:

> 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 it determines, after an examination of the defendant by the court or by the State's Attorney or by the attorney for the defendant on the record in open court, that the defendant knowingly and voluntarily waived a jury trial.

Robinson, 67 Md. App. at 453.

the record demonstrates "that the defendant has *some information* regarding the nature of a jury trial." *Valonis*, 431 Md. at 566–67 (emphasis added) (internal citations omitted). Additionally, representation by counsel is among the circumstances to be considered when determining whether a defendant has some knowledge about the right to a jury trial. *See Walker v. State*, 406 Md. 369, 382–83 (2008) (listing defendant's representation by counsel as one of the reasons underscoring the conclusion that "[the defendant] obviously had 'some knowledge' of his right to a jury trial").

Here, the record shows Kaiser knowingly waived his right to a jury trial. Kaiser's defense counsel spent an entire page of the trial transcript discussing specific aspects of a jury trial and how it is different from a bench trial:

> [DEFENSE COUNSEL]: . . . A trial by jury is different from a bench trial in that instead of having your case judged by just [the presiding judge], we would participate in a process where a pool of people would be selected at random from the motor vehicle and voter registration rolls of Cecil County, Maryland. They would all be over the age of 18, United States citizens, living in Cecil County.
>
> We would participate in a process where 12 of those individuals would be selected to serve as a jury, and instead of only convincing the judge of your guilt, the State would be burdened with proving your guilt to each of the 12 individuals on the jury. They would have to reach a unanimous verdict, and if they did not reach a unanimous verdict, that would cause a mistrial, and the State could retry the case again as often as they wanted until they got a verdict that was unanimous.

Although defense counsel did not mention that Kaiser would be presumed innocent and that the State would have the burden of convincing the jury of Kaiser's guilt beyond a reasonable doubt, we conclude the information defense counsel provided gave Kaiser "some knowledge" about the distinction between a jury trial and a bench trial.

Additionally, the fact that Kaiser was representation by counsel weighs in favor of finding a knowing waiver. This conclusion is bolstered by defense counsel and Kaiser agreeing on the record that they previously "discussed the pros and cons regarding bench trials and jury trials" and that Kaiser had already decided to waive a jury trial. In fact, Kaiser affirmed this statement three times:

> [DEFENSE COUNSEL]: . . . But we did make that decision—
>
> THE DEFENDANT: *Yes.*
>
> [DEFENSE COUNSEL]: . . . what His Honor is looking for is confirmation that that happened.
>
> THE DEFENDANT: *Correct.*
>
> [DEFENSE COUNSEL]: Do you agree that that happened?
>
> THE DEFENDANT: *Yes.*

(Emphasis added). When the trial judge asked whether Kaiser had any questions following the colloquy, he responded, "Not that I can think of, sir."

Because we determine Kaiser possessed "some knowledge" of the distinction between a jury trial and a bench trial, it is unnecessary for us to determine whether Kaiser had a "minor" criminal record, and, if he did, how it would impact the waiver. Consequently, we conclude there were sufficient evidence in the record to confidently hold that Kaiser possessed sufficient knowledge to knowingly waived his right to a jury trial.

B. Kaiser Voluntarily Waived His Right to a Jury Trial.

1. Parties' Contentions

Kaiser contends that there were factual triggers during the waiver colloquy that required the court to undertake a separate voluntariness inquiry. Specifically, he asserts

that the following combined factors triggered a voluntariness inquiry: (1) the trial already started before Kaiser formally waived his right to a jury trial; (2) in response to defense counsel asking whether Kaiser would like to waive his right to a jury trial, Kaiser asked when would a jury trial would happen; and (3) defense counsel's response to Kaiser's question suggested defense counsel had already decided to waive Kaiser's right to a jury trial and that decision was not to be undone at the time of the colloquy. Under these circumstances, Kaiser asserts the court should not have accepted his waiver without questioning whether that decision was because of duress or coercion. Put another way, Kaiser contends the court should have inquired whether he "was not simply acquiescing to a decision that had already been made by counsel."

The State argues there were no factual triggers mandating a voluntariness inquiry. The State refutes all three of Kaiser's assertions: (1) the delay between the trial's start and Kaiser's waiver colloquy was only ten minutes, as compared to the two years in the case Kaiser cited for support; (2) defense counsel's answer to Kaiser's question, that the jury trial would have happened on the same day, simply clarified for Kaiser the jury trial would have been similar to a bench trial; and (3) nothing in the record indicates a contentious relationship between defense counsel and Kaiser that would have triggered a voluntariness inquiry.

2. Analysis

During a waiver colloquy, "the court is not required to ask questions regarding voluntariness, absent a factual trigger bringing into question the voluntariness of the

waiver." *Aguilera v. State*, 193 Md. App. 426, 442 (2010). *Martinez v. State*, 309 Md. 124, (1987), illustrates the circumstances under which an inquiry calls into question whether a defendant is making a voluntary waiver of the right to a jury trial. In *Martinez*, the defendant answered "yes" to the court asking whether "any person, either inside or outside of this courthouse, made [the defendant] any promise, or [whether] anyone threatened [him] in any way in order to have [him] give up [his] right to a jury trial." *Id*. at 129. The Supreme Court of Maryland held in that circumstance, the trial court was required to determine whether a promise or threat had been made forcing the defendant to relinquish his right to a jury trial. *Id*. at 136. Because the defendant's response went unexplored and seemed to indicate that he'd been promised something or threatened into waiving his right to a jury trial, the defendant was entitled to a new trial. *Id*.

Absent a factual trigger mandating a voluntariness inquiry, the question for this Court is whether "the trial judge could fairly find," based on the defendant's demeanor, that the defendant acted voluntarily in waiving his right to a jury trial. *Aguilera*, 193 Md. app at 442–43 ("[I]n the absence of a trigger, the court is permitted to make its voluntariness determination based on the defendant's demeanor, without asking any specific questions about voluntariness.") *State v. Hall*, 321 Md. 178, 183 (1990). As with the knowledge requirement, however, a waiver's voluntariness is judged based on the totality of the circumstances as observed by the trial judge. *Kang v. State*, 393 Md. 97, 108 (2006). The trial judge is in the best position to determine whether the defendant's demeanor may indicate a reason to specifically ask about the waiver's voluntariness. *Id.*

Here, there was no factual trigger indicating the necessity of a separate voluntariness inquiry. None of the incidents that arose during the court's colloquy with Kaiser or his attorney were voluntariness triggers. *First*, Kaiser's inquiry about when a jury trial would have happened, and defense counsel's response, do not suggest that the subsequent waiver could have been the result of Kaiser's lack of understanding of what a jury trial was or his attorney's coercion. Immediately following the exchange, Kaiser successively confirmed that he and his defense counsel previously decided to waive his right to a jury trial. This is not a situation where the defendant indicated confusion about what he was doing, as was the case in *Martinez*.

Second, we are not convinced that the waiver colloquy indicated a coercive or otherwise concerning relationship between Kaiser and his attorney. Defense counsel's use of the word "we" during the colloquy does not give rise to a presumption of coercion because it is reasonable to conclude Kaiser and his lawyer together discussed waiver of a jury trial before the trial started. The record is devoid of anything in Kaiser's behavior or statements from which we can say that the trial judge clearly erred in not engaging in a voluntariness inquiry. Kaiser expressed unwavering satisfaction with his defense counsel at a conference on September 19, 2022, two days before trial.

> THE COURT: And so far, has [defense counsel] done a nice job for you?
>
> THE DEFENDANT: Absolutely.
>
> THE COURT: Do you have any complaints you want to bring to my attention?
>
> THE DEFENDANT: Nope.
>
> THE COURT: Anything [defense counsel's] done, you take issue with?

THE DEFENDANT: Absolutely not.

THE COURT: Any third parties to whom you've reported your disaffection with this process?

THE DEFENDANT: No.

THE COURT: In other words, you got any complaints out there I need to deal with?

THE DEFENDANT: No.

THE COURT: All right.

THE DEFENDANT: No, sir.

Kaiser did not express dissatisfaction with his counsel at trial or at any other time after the status conference.

We perceive nothing in the trial record which shows discord or dissatisfaction between Kaiser and his attorney. Under the totality of the circumstances, a voluntariness inquiry was not warranted during Kaiser's waiver colloquy. For these reasons, the trial court was not required to conduct a voluntariness inquiry.

THE JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.