Circuit Court for Baltimore County
Case No. 03-K-18-003918

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2204

September Term, 2019

RALPH WILLIAM LEE, III

v.

STATE OF MARYLAND

Arthur,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 28, 2021

Appellant Ralph William Lee, III, was convicted at a bench trial in the Circuit Court for Baltimore County of first-degree assault; second-degree assault; three counts of possessing a firearm after a disqualifying conviction; and wearing, carrying, or transporting a handgun. Lee raises two challenges on appeal, asserting that the circuit court failed to comply with Maryland Rule 4-215(e) governing the discharge of counsel and failed to ensure that his waiver of a jury trial was made knowingly and voluntarily.

Because Lee's questions on appeal concern procedural matters that occurred prior to his trial on the merits, the underlying facts are largely irrelevant. It is sufficient to relate that Lee was convicted of assaulting his girlfriend with a handgun, causing her to sustain serious injuries to her head. The court sentenced Lee to a total of 25 years of imprisonment, with five years suspended, and the first five years to be served without the possibility of parole.

For the following reasons, we shall affirm the judgments.

I. DISCHARGE OF COUNSEL UNDER MARYLAND RULE 4-215(e)

Lee first challenges that the circuit court violated Maryland Rule 4-215(e) when it accepted his request to discharge his attorney. Specifically, Lee claims that the court failed to: 1) sufficiently inquire into his reasons for discharging his attorney; 2) consider the reasons offered and explicitly state on the record whether his reasons for discharging counsel were meritorious or not; and 3) comply with the required advisements in Rule 4-215(a). The State argues that Lee's claims are without merit, and we agree.

"The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights." *Jones v. State*, 175

Md. App. 58, 74 (2007) (citations omitted). A defendant in a criminal prosecution therefore has a constitutional right to have effective assistance of counsel and the corresponding right to reject that assistance and choose self-representation. *Dykes v. State*, 444 Md. 642, 647-48 (2015); *see also Powell v. Alabama*, 287 U.S. 45, 71 (1932) (recognizing the constitutional right to the effective assistance of counsel); *Faretta v. California*, 422 U.S. 806, 807 (1975) (recognizing the constitutional right to defend oneself).

Maryland Rule 4-215(e) was adopted to protect these constitutional guarantees. The procedure required by the Rule can be broken down into three steps. *State v. Westray*, 444 Md. 672, 674-75 (2015) (citing *Dykes*, 444 Md. at 651-54). First, a defendant requesting permission to discharge counsel must be given the opportunity to explain the reasons for wanting to do so. *Id*. Next, the trial court must determine whether the defendant's reasons are meritorious. *Id*. Finally, based on this determination, the trial court must then advise the defendant on what actions will be taken. *Id*. If the court has found that the defendant has meritorious reasons, the court shall permit the defendant to discharge counsel and "give the defendant an opportunity to retain new counsel. In the case of an indigent defendant, this means an opportunity for new appointed counsel." *Dykes*, 444 Md. at 653 (internal citation omitted) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)). If the court has found that there is no meritorious reason to discharge counsel, the court shall advise the defendant that the trial will proceed as scheduled and that he will be unrepresented if he does not obtain new counsel. *Id.* at 653. Under either circumstance, the court must also

conduct proceedings outlined in Rule 4-215(a) governing a defendant's first appearance in court without counsel.[1]

We apply two standards of review. First, the provisions of Rule 4-215 are "mandatory and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010) (quotation marks and citation omitted). Accordingly, we review a circuit court's compliance with Rule 4-215 without deference. *State v. Graves*, 447 Md. 230, 240 (2016) (citation omitted). If the trial court failed to follow the steps, we must reverse. The decisions made within the steps are, however, discretionary and we review the trial court's evaluation of whether the reasons for discharging counsel are meritorious with great deference, subject only to abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013). An "abuse of discretion" occurs "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Nash v. State*, 439 Md. 53, 67 (2014) (cleaned up).

[1] Maryland Rule 4-215(a) provides that the court shall:

> (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
>
> (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
>
> (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
>
> (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

A. Reasons for Discharging Counsel

Lee first argues that the circuit court erred under Rule 4-215(e) because the court failed to make a "sufficient inquiry and examination" of his request to discharge his counsel. We disagree.

Lee was arrested and made his initial appearance in district court on August 10th. He had a bail review hearing in the district court a few days later. On September 5, 2018, the case was transferred to the circuit court and within a few weeks, an attorney with the public defender's office had entered his appearance and filed various motions on Lee's behalf. Lee then filed additional redundant motions on his own behalf. On December 6, 2018, a hearing was held on the State's motion for postponement of the trial date set for December 17th. At the outset of the hearing, Lee, who was present with his appointed attorney, advised the court that he wanted "to strike the appearance" of his counsel. The following discussion occurred:

> THE COURT: All right. [Lee], you're telling the [c]ourt that you want to fire your attorney?
>
> [LEE]: Yes.
>
> THE COURT: Okay. Did you want to state your reasons for–
>
> [LEE]: I want to proceed without him.
>
> THE COURT: Sir, you're going to have to let me finish asking my question before you start to answer, okay.
>
> [LEE]: Oh, sorry.
>
> THE COURT: Because if I'm talking when you start talking I don't hear you, okay.

[LEE]: I apologize.

THE COURT: I need you to tell me what reasons you have for wanting to fire [counsel].

[LEE]: Because he just told me the State's Attorney wants a postponement for a DNA testing that they done had for four months.

I've been sitting for four months. They have – I'm being charged with a handgun that they do not have. They didn't have no search and seizure warrants or whatever – whatsoever in these charges and the alleged assaults happened in Baltimore City out of this jurisdiction.

THE COURT: Okay.

[LEE]: And I'm like being falsely imprisoned.

THE COURT: I hear that that's very frustrating to you. I can see that and I certainly understand why.

But what you're telling me now is you want to fire your attorney because he told you what the State was going to ask for. That's why you want to fire [counsel]?

[LEE]: He ain't do what I asked him to do.

THE COURT: What did you ask him to do that he didn't do?

[LEE]: Contest it. And he told me he wasn't.

Lee added that he believed that his due process rights had been violated because the State had DNA evidence since August 14th. The court advised Lee that he was now arguing the merits of the State's postponement request "and that's an entirely different issue." The following discussion occurred:

THE COURT: But before I get to that issue, before I can consider whether or not I should grant the State's postponement request and hear whatever your arguments are, I have to decide whether or not you're knowingly and voluntarily waiving your right to counsel because the Constitution requires that you be provided with an attorney to represent you.

An attorney can provide extremely valuable services to you in explaining to you the elements of the charges that the State has to prove, explaining to you if you have any technical legal defenses, whether you have any factual defenses, in helping you present evidence, both witness testimony and tangible evidence to present on your behalf and even helping you with sentencing in the event that you're convicted of something.

Your right to counsel is so valuable that if you can't afford to hire the attorney of your choice the State provides you with an attorney through the Office of the Public Defender, which is how [counsel] came to represent you.

Now, if you – as valuable as your right to counsel is, you can waive that right because it's up to you. I mean, it is your right. You can go forward without an attorney.

[LEE]: You're fired.

THE COURT: But I need to make sure – sir, you need to listen because this is important.

If you fire [counsel], you're not going to get a replacement attorney from the Public Defender's Office.

[LEE]: All right.

THE COURT: You're also, if you choose to go forward in your trial by yourself, you will not have

> standby counsel. That means that you won't have an attorney there that you can ask questions of.
>
> You'll be all alone representing yourself. So my question to you is, do you want to do that or do you want to go forward with [counsel] as your attorney?
>
> [LEE]: He's fired. I don't want him representing me.
>
> THE COURT: All right. I find that the [Lee] has knowingly waived his right to counsel and the appearance of [counsel] and the Office of the Public Defender is stricken.

The State then explained it was seeking a postponement because the crime lab had a significant backlog and could not complete DNA testing before the trial date. The court granted the State's motion for continuance and rescheduled the trial for March 5, 2019.[2]

Lee argues that the circuit court failed to sufficiently examine him about his reasons for wanting to discharge his counsel. Generally, however,

> [a] trial judge has no affirmative duty to rehabilitate a defendant's expression of why he or she may desire to discharge his or her counsel; rather, the trial judge has the duty to listen, recognize that he or she must exercise discretion in determining whether the defendant's explained reasons are meritorious, and make a rational decision.

State v. Taylor, 431 Md. at 642 (citations omitted). In other words, if the defendant posits "no information that require[s] follow up, the court is not required to inquire further."

[2] Before Lee's trial on the afternoon of March 5, 2019, Lee appeared on his own behalf at three hearings—a re-arraignment hearing on January 28, 2019; the State's second postponement request on March 4, 2019; and his waiver of his right to jury trial on the morning of March 5, 2019.

Hargett v. State, 248 Md. App. 492, 509 (2020) (quotation marks and citation omitted). "If the 'record reveals the existence of information relevant to the [defendant's] reason[,]' however, and further inquiry is necessary to assess the merit of that reason, then the court must inquire." *Id*. (quoting *Moore v. State*, 331 Md. 179, 186 (1993)).

Here, the circuit court asked Lee about his reasons for wanting to discharge counsel ("I need you to tell me what reasons you have for wanting to fire [counsel]"). The court then reiterated to Lee the reasons he gave to be sure there was no mistake. ("But what you're telling me now is you want to fire your attorney because he told you what the State was going to ask for. That's why you want to fire [counsel]?...What did you ask him to do that he didn't do?). The reasons Lee gave to the court were clear and self-explanatory. ("Contest [the State's request for a postponement]. And he told me he wouldn't"). On the record provided, the court was not required to inquire any further. Accordingly, contrary to Lee's argument, it was not error for the circuit court not to inquire further into the reasons Lee offered for wanting to discharge his counsel.

B. Determination Regarding Meritoriousness

Lee next argues that the court erred by failing to explicitly analyze his reasons for discharging counsel and announce a decision on the record as to whether those reasons were meritorious or not. Again, we disagree.

In determining whether the reasons proffered are meritorious, circuit courts are encouraged to consider six factors:

> (1) the merit of the reason for the discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings;

> (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

Hargett, 248 Md. App. at 509-10 (quoting *State v. Brown*, 342 Md. 404, 428 (1996)). Rule 4-215(e) does not, however, require the court to state on the record whether it deems those reasons meritorious or not. An implicit determination is sufficient.

When applying a procedural rule, we look to the "plain meaning" of the words themselves and interpret the words in the context of the entirety of the Rule. *Pinkney v. State*, 427 Md. 77, 88 (2012). Rule 4-215(e) does not, on its face, contain any language requiring the court to state, on the record, whether the reasons given are meritorious or not. Comparing other parts of Rule 4-215 support this conclusion. In contrast to 4-215(e), Rule 4-215(b) requires that an express waiver of the right to counsel by an unrepresented defendant may not be accepted unless the court "*determines and announces on the record*" that the waiver is made knowingly and voluntarily. MD. R. 4-215(b) (emphasis added). Similarly, Rule 4-246(b) requires that a waiver of a jury trial may not be accepted unless "the court *determines and announces on the record* that the waiver is made knowingly and voluntarily." MD. R. 4-246(b) (emphasis added). By contrast, Rule 4-215(e) contains no such language requiring a court to expressly find on the record that a defendant's reasons for discharge are meritorious when the record establishes that the circuit court considered the reasons proffered and implicitly found the reasons offered lack merit. *Cf. Broadwater v. State*, 171 Md. App. 297, 327 (2006) (holding that the circuit court did not err by making an implicit finding that there was no meritorious reason for the defendant's appearance without counsel); *Webb v. State*, 144 Md. App. 729, 747 (2002) (finding no error where

"[t]he court, after listening to the explanation" for discharging counsel under Rule 4-215(d), "implicitly found the reason was non-meritorious").

Here, the record confirms that the court explored and considered Lee's proffered reasons for wanting to discharge counsel by listening to the offered reasons, asking questions, and giving Lee an opportunity to reconsider his desire to discharge his counsel. The Rule provides that if the court finds no meritorious reasons for the defendant's request to discharge counsel, the court must advise him, before he discharges his counsel, that the trial will proceed as scheduled with the defendant unrepresented by counsel. MD. R. 4-215(e). By advising Lee that he would proceed to trial without counsel, the court implicitly found that he had not provided a meritorious reason to discharge counsel. As we explained above, the plain language of the rule does not require a formalized explicit announcement, and we decline to graft such a requirement onto the Rule. We are persuaded that, on the record presented, the court both considered Lee's reasons for wanting to discharge counsel and found them without merit.

C. Compliance with Rule 4-215(a)

Lee next argues that the circuit court erred by not complying with Rule 4-215(a). Specifically, Lee argues that the court did not: 1) make certain that he had received a copy of the charging documents, MD. R. 4-215(a)(1); 2) advise him of the nature of the charges and the allowable/mandatory penalties, MD. R. 4-215(a)(3); and 3) conduct a waiver inquiry pursuant to Rule 4-215(b), and "[announce] on the record that the defendant is knowingly and voluntarily waiving the right to counsel," MD. R. 4-215(a) (4). The record does not support his claims.

1. Rule 4-215(a)(1) – copy of the charging documents

At Lee's initial appearance in district court on August 10, 2018, the district court commissioner certified that Lee was "provided with a copy of the charging document [because] defendant did not already have one." At his bail review hearing in district court on August 13, 2018, a hearing sheet signed by district court Judge Kimberly Thomas stated that the judge "made certain the defendant received copy of charging document[.]" The appellate courts have consistently held that requirements of Rule 4-215(a) can be satisfied in a "piecemeal, cumulative" fashion by multiple courts over multiple hearings. *See Broadwater v. State*, 401 Md. 175, 200 (2007). "If evidence objectively establishes that the defendant actually received a copy of the charging document," the Rule 4-215(a)(1) requirement is satisfied. *Muhammad v. State*, 177 Md. App. 188, 250 (2007) (citing *Fowlkes v. State*, 311 Md. 586, 609 (1988)). We conclude that the evidence shows that Lee was provided a copy of the charging document and that the requirement of Rule 4-215(a)(1) was satisfied.

2. Rule 4-215(a)(3) – nature of the charges and allowable penalties

The record also shows that Lee was advised of the nature of the charges against him and the allowable penalties. At Lee's initial appearance in district court, the district court commissioner certified that he had "informed Defendant of each offense charged and the allowable penalties[.]" Additionally, Lee recognizes in his appellate brief that he was advised of the charges against him and allowable penalties when he appeared at a re-arraignment hearing before the circuit court on January 28, 2019. As stated above, the requirements of Rule 4-215(a) can be satisfied in a "piecemeal, cumulative" fashion by

multiple courts over multiple hearings. *Broadwater*, 401 Md. at 200. Accordingly, we reject Lee's claim.

3. Rule 4-215(a)(4) – determine and announce on the record that the defendant knowingly and voluntarily waived the right to counsel

Next, Lee argues that even though the circuit court announced on the record that he knowingly waived his right to counsel, the court erred when it failed to announce on the record that his waiver was both knowing *and* voluntary. *See* MD. R. 4-215(b) ("If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until…*the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel*") (emphasis added.) Although Lee recognizes that he has not preserved this argument for our review because he did not object to the court's failure to "determine and announce" both findings on the record, he nonetheless argues we should exercise our discretion and review his claim under the doctrine of plain error.

When, as is the case here, a defendant claims that a court failed to determine and announce on the record that his waiver was knowing and voluntary, if, at the time of the inquiry, the defendant was represented by counsel, a contemporaneous objection must be made or else the issue is not preserved. *Westray*, 444 Md. at 686-87. As Lee correctly notes, because he was represented by counsel and failed to make a contemporaneous objection to the court's lack of an announcement on the record that his waiver of counsel was both knowing and voluntary, his argument is not preserved for our review.

When an unobjected to error is claimed, we look to Maryland Rule 8-131(a), which provides: "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" An appellate court should recognize unobjected to error, however, when "compelling, extraordinary, exceptional or fundamental to assure the defendant of fair trial." *Rubin v. State*, 325 Md. 552, 588 (1992) (quotation marks and citations omitted). The standard is high: "Every error that, if preserved, might have led to a reversal does not thereby become extraordinary." *Perry v. State*, 150 Md. App. 403, 436 (2002).

Lee does not argue that his waiver was involuntary, only that the circuit failed to recite the magic words that his waiver was knowing and voluntary. Because nothing in the record suggests that Lee's waiver was involuntary, we decline to exercise plain error review. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (explaining that appellate courts very rarely invoke the plain error doctrine).

II. KNOWING AND VOLUNTARY WAIVER OF JURY TRIAL

Finally, Lee argues that we must reverse his convictions because the circuit court, in violation of Maryland Rule 4-246 and his constitutional rights, accepted his waiver of a jury trial without ensuring that he was knowingly and voluntarily waiving that right. Specifically, Lee argues that the circuit court erred because it: 1) failed to advise him that he was cloaked in the presumption of innocence; 2) erroneously advised him that a unanimous finding of innocence was required to find him not guilty; and 3) failed to announce on the record that his waiver was voluntary. The State responds that Lee's Rule

4-246 argument is not preserved for our review because he did not object to the court's acceptance of his waiver, and that even if preserved, Lee's arguments are meritless.

An accused's right to a trial by jury is guaranteed by the Sixth Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). Similar protection is afforded to criminal defendants by Article 21 of the Maryland Declaration of Rights. *Boulden v. State*, 414 Md. 284, 293-94 (2010). A defendant also has the corresponding right to waive the right to a jury trial and instead elect to be tried by the court. *Id*. at 294 (citations omitted). To pass constitutional muster, the waiver of the right to a jury trial must be knowledgeable and voluntary, that is, that there has been an "intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

It is long-established that a court need not advise the accused of the details of the jury selection process or of a jury trial, but it 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." *State v. Bell*, 351 Md. 709, 725 (1998) (citation omitted) (emphasis in *Bell*). Thus, while courts need not engage in any "specific litany," the record must show that the defendant has some information regarding the nature of a jury trial. *Abeokuto v. State*, 391 Md. 289, 320 (2006). "Whether there is an intelligent, competent waiver must depend on the unique facts and circumstances of each case." *Valiton v. State*, 119 Md. App. 139, 148 (1998). "If the record in a given case does not disclose a knowledgeable and voluntary waiver of a jury trial, a new trial is required." *Smith v. State*, 375 Md. 365, 381 (2003) (citations omitted).

A criminal defendant's constitutional rights are protected and amplified in Md. Rule 4-246(b), which governs the waiver of trial by jury in the circuit court. The Rule provides:

> **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.

A "knowing" waiver requires "acquaintance with the principles of a jury[.]" *Bell*, 351 Md. at 730 (quotation marks and citation omitted). An explicit inquiry into voluntariness of a waiver of a right to a jury trial is not required where the defendant's answers do not indicate that he is under duress or coercion. *Kang v. State*, 393 Md. 97, 110 (2006) (citation omitted).

At Lee's jury trial waiver hearing, which occurred immediately prior to his trial, the circuit court made the following inquiries of Lee, who was, by this point, representing himself:

THE COURT:	State your full name for the record.
[LEE]:	My name is Ralph William Lee, III, Your Honor.
THE COURT:	All right. How old are you?
[LEE]:	29.
THE COURT:	All right. How far have you gone in school?
[LEE]:	10th grade.
THE COURT:	Can you read and write the English language without difficulty?

[LEE]: Yes, Your Honor.

THE COURT: All right. Right now today are you under the influence of any alcohol, any drugs, any prescribed medications, anything that effects your ability to understand what's going on here today?

[LEE]: No, Your Honor.

The court then proceeded to advise him of his right to a jury trial, first stating, "if at any point in time you don't understand what I'm explaining to you, let me know that, I'll stop and go over it with you." The court then advised Lee of the two types of trials:

THE COURT: A jury trial would consist of 12 citizens of Baltimore County. Those citizens' names would be chosen from the motor vehicle and voter registration rolls of Baltimore County. You would have a right to participate in the selection of those jurors.

Before a jury of 12 members could reach a verdict of either guilty or not guilty in your case, all 12 jurors would have to agree unanimously on your guilt or your innocence.

If they were unable to reach a verdict unanimously, that is their verdict was something of less than 12 to 0 then the case would be declared a mistrial. It would be brought back in on another day. A new jury would be impaneled and the case would be tried again in front of a new jury until such time as a single jury of 12 members were all able to agree on your guilt or your innocence.

Do you understand what a jury trial is?

[LEE]: Yes, Your Honor.

THE COURT: The second type of trial is a Court trial. A Court trial would be a trial before a single

person, a Judge of this bench, either myself or another Judge. Before a Judge could reach a verdict of guilty or not guilty in your case, they would have to be convinced beyond a reasonable doubt of your guilt or your innocence. Do you understand that?

[LEE]: Yes, Your honor.

Lee then affirmed that he understood the difference between a court trial and a jury trial and stated that he wished to waive his right to a jury trial. The court continued to advise Lee about the nature of trials:

THE COURT: Okay. You understand that the burden is on the State in both types of trial to put on witnesses live to testify, to confront and cross examine those witnesses.

You'd have a right to – you would have a right to confront and cross examine those witnesses. You'd have a right to call witnesses in your own defense, you'd have a right to testify in your own defense as well.

You understand what your trial rights are and you wish to elect to have a jury trial; is that right? I'm sorry, a Court trial, is that right?

[LEE]: Court trial, Your Honor.

THE COURT: So you wish to waive your right to a jury trial. Do you have any questions about your right to a jury trial?

[LEE]: No.

THE COURT: All right. *So that's your free and voluntary choice*; is that right?

[LEE]: Right.

> THE COURT: All right. I'll find the Defendant has waived his right to a jury trial and has elected a Court trial.

(Emphasis added.) Lee argues that this inquiry was insufficient to establish that he was making a knowing and voluntary waiver of his right to a jury trial because the court failed to explain that he was subject to a presumption of innocence, and because the court erroneously described that a jury would have to be unanimous in finding him innocent rather than "not guilty."

A. Rule 4-246 claim

A contemporaneous objection is required to preserve a violation of Maryland Rule 4-246(b). *See Spence v. State*, 444 Md. 1, 14 (2015) ("to preserve for appellate review a claim of non-compliance with Maryland Rule 4-246(b), the defense is required to object at the time of the waiver inquiry"); *Meredith v. State*, 217 Md. App. 669, 674-75 (2014) (where a defendant makes "no objection below to the waiver procedure, to its content, or to the trial court's announcement as to the 'knowingly and intelligently' made waiver of his right to a jury trial[, h]is challenge to the effectiveness of his waiver is not preserved for our review[.]"). Lee's argument that the circuit court violated Rule 4-246(b) is not preserved for our review because at no time did he object to the circuit court's acceptance of his waiver of his right to a jury trial. *Nalls v. State*, 437 Md. 674, 693-94 (2014). We hold self-represented litigants to the same standards regarding reviewability and waiver as defendants who are represented by counsel. *Grandison v. State*, 341 Md. 175, 195 (1995) (citation omitted). Moreover, we decline to exercise whatever discretion is available to us under Rule 8-131.

B. Constitutional claim

Unlike Maryland Rule 4-246(b), a contemporaneous objection is not required to preserve an allegation of a constitutional violation of a waiver of one's right to a jury trial. The right to trial by jury 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 v. State*, 284 Md. 132, 143 (1978) (quoting *Adams v. United States ex. rel. McCann*, 317 U.S. 269, 275 (1942)). Lee's argument that the circuit court erred in accepting his waiver of his constitutional right to a jury trial because his waiver was not knowing or voluntary is therefore preserved for our review, but lacks merit.

There is no fixed litany required for a defendant's waiver of the right to a jury trial to be constitutionally valid. *Nalls*, 437 Md. at 688-89. Rather, the court's examination of the defendant must make it apparent that the defendant has "some knowledge of the jury trial right before he is allowed to waive it," and that the defendant is waiving that right intentionally. *Id*. at 689 (quoting *Martinez v. State*, 309 Md. 124, 134 (1987)). There are no "magic words" that must be recited to satisfy the defendant's due process rights. *Id.* at 689. The amount of explanation required and "the questions to be asked will depend upon the facts and circumstances of the particular case." *Valonis v. State*, 431 Md. 551, 567 (2013) (citing the Committee note following MD. R. 4-246).

The record shows that the court's examination of Lee included sufficient information about what a jury trial would entail to ensure that Lee had "some knowledge." Prior to accepting Lee's waiver of his right to a jury trial, the court explained that a jury "consists of 12 citizens of Baltimore County"; "[t]hose citizens' [] would be chosen from

the motor vehicle and voter registration rolls of Baltimore County"; and Lee "would have a right to participate in the selection of those jurors." In its explanation of the unanimity requirement, the court stated that "[b]efore a jury of 12 members could reach a verdict of either guilty or not guilty in your case, all 12 jurors would have to agree unanimously on your guilt or your innocence."

Lee's main complaint is that in its explanation, the court mischaracterized what was necessary for an acquittal in a jury trial by describing that "all 12 jurors would have to agree unanimously on your guilt or your innocence." Lee argues that this misstatement invalidated his waiver because he could have concluded that 12 people finding him innocent was "far less likely" than a single person—the judge—finding him innocent.

"We readily acknowledge the legal distinction between the terms 'not guilty' and 'innocent.' The former connotes that the State has not carried its burden; the latter connotes a jury finding of no criminal responsibility." *State v. Daughton*, 321 Md. 206, 213 (1990). While we should not be "understood as placing our approval on the use of the term "innocent" instead of "not guilty," *Id.* at 214, under the circumstances, we are not persuaded that the distinction between the two terms rendered Lee's waiver unknowing. Immediately prior to the misstatement, the court correctly and clearly stated that all 12 members of the jury would have to "reach a verdict of either guilty or not guilty in your case[.]" Overall, the court correctly advised Lee regarding his right to a jury trial. The court's use of the word "innocence" instead of "not guilty" amid the otherwise accurate information is not enough to convince us that Lee would have been misled by the court's instructions. *Cf. Winters v. State*, 434 Md. 527, 539 (2013) (requiring reversal where the

court incorrectly instructed the defendant that he would have to prove he was not criminally responsible beyond a reasonable doubt, rather than the correct standard of a preponderance of the evidence). We, therefore, conclude that Lee's waiver was constitutionally valid.

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