

Circuit Court for Montgomery County
Case No.: 134029-C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2588

September Term, 2019

JOSE DANIEL GOMEZ-REYES

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 11, 2021

*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 a bench trial in the Circuit Court for Montgomery County, the court found Jose Daniel Gomez-Reyes, appellant, guilty of second-degree rape. The court sentenced appellant to twenty years' imprisonment with all but seven years suspended.

On appeal, appellant contends that the trial court violated his Constitutional rights, and Maryland Rule 4-246, by failing to ensure that he knowingly and voluntarily waived his right to be tried by a jury. For the reasons explained below, we shall affirm.

BACKGROUND

Because appellant's sole contention on appeal relates to his jury trial waiver, we need not, and do not, explicate the facts of the offense in significant detail. It is sufficient to say that the court convicted appellant of the second-degree rape of an eighteen-year-old woman who had recently moved to the United States and was living in the basement of her aunt and uncle's home. Appellant also lived in the basement, but in a different room. His defense was that the sexual intercourse was consensual. The offense occurred in April of 2006.

At the beginning of proceedings on November 12, 2019, the following colloquy occurred:

THE COURT: Good morning, okay. All right. So I now understand the parties have now decided to proceed by way of a bench trial as opposed to a jury trial, is that correct?

[Defense counsel]: That is correct, Your Honor.

THE COURT: All right. So, Mr. Gomez-Reyes, sir? I need to make sure that you understand the difference between a bench trial and a jury trial, okay?

Feedback?

THE INTERPRETER: Pretty heavy, thank you.

THE COURT: All right. Mr. Gomes-Reyes? Good morning, sir.

[Appellant]: (In English) Good morning.

THE COURT: Good morning. Okay. So it's my understanding that you've elected or chosen to proceed today by way of a bench trial as opposed to a jury trial?

[Appellant]: Yes.

THE COURT: Okay. So do you understand the difference between a jury trial and a bench trial?

[Appellant]: Yes.

THE COURT: All right. So you understand that it is your choice how you wish to proceed to trial, and that if you chose a jury trial we would bring in citizens from Montgomery County and we would select 12 men and women who would decide this case, and it would be the jury who determine guilty or not guilty. Do you understand that?

[Appellant]: Yes.

THE COURT: All right. And do you understand that if you choose to proceed by way of a bench trial it would be the judge, me, who would determine guilty or not guilty?

[Appellant]: Yes.

THE COURT: All right. And have had an opportunity to discuss this with your attorney?

[Appellant]: What is that?

THE COURT: Have you had an opportunity, have you had enough time to discuss this with your attorney?

[Appellant]: Yes.

THE COURT: Okay. And it is your decision to proceed by way of a bench trial today and not a jury trial?

[Appellant]: Yes.

THE COURT: Okay. All right. Satisfied, Mr. Wemple?

[Defense counsel]: I am, Your Honor - -

THE COURT: Okay.

[Defense counsel]: - - thank you.

THE COURT: Ms. Herdman, same - -

[State]: Yes, Your Honor, thank you.

THE COURT: Okay. All right. All right, so we will proceed by way of a bench trial as opposed to a jury trial, so let Vinnie know in the jury commissioner's office?

THE CLERK: Yes.

The parties gave opening statements, then the court returned to the jury trial waiver and asked additional questions, as follows:

THE COURT: Okay. Earlier when I inquired of Mr. Gomez-Reyes about the waiver of the jury trial I forgot to ask a couple questions, so I just want to go back to the waiver of the jury trial, bench trial just to make sure - -

[Defense counsel]: Okay.

THE COURT: - - that we are clear on the record. All right. Mr. Gomez-Reyes?

[Appellant]: Yes?

THE COURT: How old are you sir?

[Appellant]: 35.

THE COURT: Okay. Are you currently under the influence of any drugs, alcohol, or medication?

[Appellant]: No.

THE COURT: Okay. Have you ever been treated or diagnosed with a mental health illness?

[Appellant]: No.

THE COURT: Okay. Has anyone, your decision, let's see. Has anyone made you any threats, promises, or inducements to get you to proceed by way of a bench trial versus a jury trial?

[Appellant]: No.

THE COURT: Okay. All right. Do you understand all of your rights with respect to a jury trial?

[Appellant]: I don't understand.

THE COURT: Okay. Do you understand, as we discussed earlier, the difference between a jury trial and a bench trial?

[Appellant]: Oh, yes.

THE COURT: Okay. And do you understand that it is your right to choose a jury trial or a bench trial?

[Appellant]: Yes.

THE COURT: Okay. And are you voluntarily waiving your right to a jury trial?

[APPELLANT]: Yes.

THE COURT: Okay. I just want to make sure for the record that I was clear on that. Do you have any questions for me about how the trial will proceed?

[Appellant]: No.

THE COURT: Okay. All right. I'm satisfied that Mr. Gomez-Reyes has voluntarily, knowingly and voluntarily waived his right to a jury trial and we will proceed by way of a bench trial. Okay.

DISCUSSION

As noted earlier, appellant contends that the foregoing jury trial waiver colloquy was inadequate because:

... appellant was not given any information regarding the presumption of innocence; he was not told that the twelve jurors would be selected from a randomly selected list of persons who reside in Montgomery County and that he and his attorney could participate in their selection; he was not told that if

the jury was unable to reach a unanimous decision, a mistrial would be declared and the State would have the option of retrying him; he was not told that all 12 of the jurors must agree and could only convict upon proof beyond a reasonable doubt; and he was not told that he could only change his election if the court found good cause.

Although the right to a jury trial is a fundamental right guaranteed by both the Sixth Amendment and the Maryland Declaration of Rights, a criminal defendant may nonetheless choose to waive his or her right and proceed with a bench trial. *Boulden v. State*, 414 Md. 284, 294 (2010). Maryland Rule 4-246 governs the waiver of the right to a jury trial in circuit court and provides in relevant part:

(a) *Generally*. In the circuit court, a defendant having a right to trial by jury shall be tried by a jury unless the right is waived pursuant to section (b) of this Rule. The State does not have the right to elect a trial by jury.

(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.

“Such a waiver is valid and effective only if made on the record in open court and if the trial judge determines, after an examination of the defendant on the record and in open court, that it was made ‘knowingly and voluntarily.’” *Nalls v. State*, 437 Md. 674, 685 (2014). To determine whether a waiver is knowing and voluntary, the 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.” *State v. Bell*, 351 Md. 709, 725 (1998) (emphasis in original). Although there is no “specific litany” in which the court must engage, the record must show that the defendant

has “some knowledge of the jury trial right before being allowed to waive it.” *Abeokuto v. State*, 391 Md. 289, 318, 320 (2006).

During the colloquy regarding appellant’s waiver of his right to a jury trial, appellant repeatedly told the court that he knew the difference between a court trial and a jury trial. He also told the court that he did not have any questions “about how the trial will proceed.” Moreover, appellant told the court that he had enough time to discuss the choice of a bench trial with his attorney. In addition appellant said he understood that “if [he] chose a jury trial we would bring in citizens from Montgomery County and we would select 12 men and women who would decide this case, and it would be the jury who determine guilty or not guilty[,]” and that “if [he chose] to proceed by way of a bench trial it would be the judge [] who would determine guilty or not guilty.”

We are persuaded that appellant’s repeated statements that he understood the difference between a jury trial and a bench trial, his statement that he had discussed the issue with defense counsel, and the advisements the trial court gave, were sufficient to establish “some knowledge” of the jury trial right. Therefore, the trial court made no error in determining, and announcing on the record, that appellant had “knowingly and voluntarily waived his right to a jury trial.”

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

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