UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2630

September Term, 2012

DARIUS LEVON WILMOT

v.

STATE OF MARYLAND

Woodward,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 22, 2015

Following a waiver of his right to a trial by jury, Darius Levon Wilmot ("Wilmot") was convicted at a bench trial in the Circuit Court for Cecil County of sexual abuse of a minor. After he was sentenced, Wilmot filed this timely appeal in which his sole contention is that the trial judge committed reversible error by failing to announce on the record, as required by Maryland Rule 4-246(b), that his jury trial waiver was made "knowingly and voluntarily." This contention, as the State argues, was not preserved for appellate review because, in the circuit court, appellant made no objection to the waiver procedure, to its contents, or to the trial court's failure to announce that the waiver had been made "knowingly and voluntarily."

This issue is controlled by *Meredith v. State*, 217 Md. App. 669, 674-75, *cert. denied*, 440 Md. 226 (2014).[1] In *Meredith*, Judge Raker, speaking for this Court, said:

> In *Valonis & Tyler v. State,* 431 Md. 551, 567, 66 A.3d 661, 670 (2013), the Court of Appeals left no doubt that the trial judge must make a determination, on the record, that the defendant's waiver is both *knowing* and *voluntary*. In order to guide the trial courts, the Court of Appeals in that consolidated case exercised its discretion under 8-131 and addressed appellants' argument even though there was no contemporaneous objection lodged in the trial court. The Court did so "to review the merits . . . due to our perception of a recurring problem–namely, the failure of trial judges to follow Rule 4-246(b)–and to further encourage trial judges to adhere to the letter of the Rule." *Nalls & Melvin v. State*, 437 Md. 674, 693, 89 A.3d 1126, 1137 (2014). Post *Valonis*, there can be no doubt that, even though no specific litany is required, the record must reflect that the trial judge explicitly found that the defendant waived a jury both *knowingly* and *voluntarily*.

[1] At the time that the briefs in the subject case were filed, *Meredith v. State*, 217 Md. App. 669 (2014) had not been decided.

> What was less clear following *Valonis* was whether an appellate court would review a jury trial waiver absent a contemporaneous objection to the trial court. In *Nalls & Melvin v. State*, the Court of Appeals spoke loud and clear that a contemporaneous objection in the trial court is a necessary predicate for appellate review. After exercising its discretion under Rule 8-131 to review the trial court's compliance with Rule 4-246(b), the Court stated as follows:
>
> > Going forward, however, the appellate courts will continue to review the issue of a trial judge's compliance with Rule 4-246(b) provided a *contemporaneous* objection is raised in the trial court to preserve the issue for appellate review.
>
> *Id*. (Emphasis added.)
>
> In the case *sub judice*, appellant made no objection below to the waiver procedure, to its content, or to the trial court's announcement as to the "knowingly and intelligently"[2] made waiver of his right to a jury trial. His challenge to the effectiveness of his waiver is not preserved for our review and is not properly before this Court. We shall not exercise our discretion under Rule 8-131to consider the issue.
>
> *Id*.

In *Clark v. State*, 218 Md. App. 230, 243-44 (2014), we cited *Meredith* and reiterated that, pursuant to the decisions in *Nalls & Melvin v. State*, 437 Md. 674, 693 (2014), the absence of an objection to the trial court's failure to determine and announce that a jury trial waiver was made "knowingly and voluntarily," renders a defendant's claim of error in that regard unpreserved for appellate review. More recently, in *Spence v. State*, No. 7.

[2] In *Meredith*, the judge misspoke and found that the defendant had "knowingly and intelligently" given up his right to a jury trial rather than "knowingly and voluntarily" given up that right.

September Term, 2014, filed July 27, 2015, the Court of Appeals reached the same conclusion regarding this preservation issue as this Court did in *Meredith* and *Clark. Id., slip op.* at 15.

For the reasons expressed above, we hold that Wilmot's challenge to his jury trial waiver is unpreserved. We recognize, of course, that Maryland Rule 8-131(a) grants an appellate court the discretion to review issues that were neither raised or decided below. Nevertheless, as we did in *Clark* and *Meredith*, both *supra*, we decline to exercise the discretion granted to us by Md. Rule 8-131(a).

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.