

Circuit Court for Anne Arundel County
Case No. C-02-CR-19-002569

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 716

September Term, 2020

DAMIEN KING

v.

STATE OF MARYLAND

Shaw Geter,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 2, 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.

Convicted by the Circuit Court for Anne Arundel County of first degree burglary, Damien King, appellant, presents for our review a single question: whether the court “failed to ensure that Mr. King’s waiver of his right to a jury trial was made knowingly and . . . to determine and announce on the record that his waiver was made knowingly.” For the reasons that follow, we shall affirm the judgment of the circuit court.

Mr. King was initially charged with first degree burglary and theft of property of a value between \$100 and \$1500. When the parties appeared for trial, defense counsel told the court that Mr. King “would elect to have a bench trial as opposed to a trial by jury.” Defense counsel subsequently elicited testimony from Mr. King that he was 34 years old, was not “under the influence . . . of any illegal drugs or alcohol,” and was “thinking clearly . . . in terms of [his] choice of a trial by jury versus a trial by a judge.” After Mr. King confirmed that he understood that he had “a right to a jury trial,” trial counsel advised him:

[A] jury would consist of the following. A group of individuals will be selected randomly from the motor and voter registration rolls of Anne Arundel County. Every one in that pool would be over the age of 18. Everyone in that pool would be a United States citizen. And everyone in that pool would be a resident of Anne Arundel County. We would have the ability to select 12 individuals from that pool to serve as your jurors and they would have to return a unanimous verdict.

If they did not retain – return a unanimous verdict, then a mistrial would be declared and the State would have the ability to start – try you again and start your case all over again.

Mr. King confirmed that he understood. After confirming that he “had enough opportunity to talk to [defense counsel] about [the] choice between a judge trial and a jury trial,” Mr. King stated that he elected a bench trial. After Mr. King confirmed that no one had “threatened or forced . . . or coerced” him, or “made any promises or inducements to entice”

him, “to make that decision,” the court stated: “The [c]ourt finds that he has freely and voluntarily elected to have a court trial today as opposed to a jury trial and waived his right to a jury trial.” Following trial, the court acquitted Mr. King of the theft offense, but convicted him of first degree burglary.

Mr. King now contends that by failing to inform him “that he was presumed innocent until proven guilty” and “of the State’s burden to prove the elements of the offenses beyond a reasonable doubt,” the court “failed to ensure that Mr. King’s waiver was made knowingly[] as required by” Rule 4-246(b) (a “court may not accept the waiver until, after an examination of the defendant on the record in open court . . . , the court determines and announces on the record that the waiver is made knowingly and voluntarily”) “and the Constitution.” Mr. King further contends that the court “failed to determine and announce that Mr. King knowingly waived his right to a jury trial, as required by the Rule.” *See id.* The State counters that Mr. King’s contentions are unpreserved, because “[n]o objection in either of these regards was raised below.” Alternatively, the State contends that the “court’s acceptance of [Mr.] King’s waiver was proper because [he] had ‘some knowledge’ of his jury trial right.”

With respect to Mr. King’s contentions that the court violated Rule 4-246(b), we agree with the State that the contentions are not preserved for our review. In *Nalls & Melvin v. State*, 437 Md. 674 (2014), the Court of Appeals stated that “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.* at 693. Here, defense counsel did not raise any such objection, and hence, we shall not review the contentions with respect to Rule 4-246(b).

With respect to Mr. King’s contention that the jury trial waiver was constitutionally deficient, however, we conclude that the contention is preserved for our review. In *Curtis v. State*, 284 Md. 132 (1978), the Court of Appeals noted that a “waiver is ordinarily an intelligent relinquishment or abandonment of a known right or privilege,” and “[t]his high standard has been applied regarding the waiver of the right to trial by jury.” *Id.* at 143 (internal citation and emphasis omitted). Hence, we shall review the contention.

In *Walker v. State*, 406 Md. 369 (2008), the Court of Appeals stated that in determining whether a waiver of the right to trial by jury was made knowingly and voluntarily, a

 circuit court judge need not recite any fixed incantation, but the court is ultimately responsible for determining that the defendant had some knowledge of the jury trial right before being allowed to waive it. To waive the constitutionally protected right to a trial by jury the trial judge must be satisfied that there has been an intentional relinquishment or abandonment of a known right or privilege. Because only the defendant can validly waive his or her right to trial by jury, the defendant must directly respond to the waiver inquiry. Moreover, in determining whether the defendant made the waiver knowingly, [an appellate court] will look to the totality of the circumstances.

Id. at 378-79 (internal citations and quotations omitted).

Here, trial counsel advised Mr. King that he had the right to choose between a jury trial and bench trial, and that if he elected a trial by jury, the prospective jurors would “be selected randomly from the motor and voter registration rolls of Anne Arundel County,” “over the age of 18,” “United States citizen[s],” and “resident[s] of Anne Arundel County.” Trial counsel further advised Mr. King that he “would have the ability to select 12

individuals from that pool to serve as . . . jurors,” and that “they would have to return a unanimous verdict” or a mistrial would be declared. Mr. King replied that he understood, and confirmed that he “had enough opportunity to talk to [defense counsel] about [the] choice between a judge trial and a jury trial.” *See id.* at 382-83 (recognizing that the fact that a defendant is “represented by counsel” may be considered in determining whether the defendant’s waiver of the right to trial by jury “was knowing and voluntary”). Also, Mr. King did not intentionally relinquish or abandon the requirement that he be presumed innocent or that the State establish his guilt beyond a reasonable doubt, both of which applied regardless of whether Mr. King was tried by a jury or the court. The totality of the circumstances reflects that Mr. King had some knowledge of his right to trial by jury before he was allowed to waive it, and hence, the court did not err in accepting the waiver.

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