Circuit Court for Prince George's County
Case No. CT201159X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 733

September Term, 2024

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KEVIN BAILEY, SR.

v.

STATE OF MARYLAND

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Tang,
Kehoe, S.
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Tang, J.

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Filed: April 21, 2026

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

Following a bench trial in the Circuit Court for Prince George's County, the appellant, Kevin Bailey, Sr., was convicted of one count of sexual abuse of a minor by a family member under Md. Code Ann., Crim. Law Art. ("CR") § 3-602(b)(2)[1] and third-degree sexual offense under CR § 3-307(a)(3).[2] The court sentenced the appellant to fifteen years' imprisonment with all but seven years suspended for the sexual abuse of a minor count, and a concurrent term of five years with all but one year suspended for the count of third-degree sexual offense. On appeal, the appellant raises the following questions:

1. Did the appellant knowingly waive his right to a jury trial?
2. Was the evidence legally sufficient to sustain the appellant's convictions?

For the reasons discussed below, we affirm.

**FACTUAL BACKGROUND**

K.B., fourteen years old at the time of trial, described two occasions in which her father, the appellant, touched her in a sexual manner. The first instance took place during the summer of 2019. According to K.B., she was about ten years old and alone with the appellant at their house in Upper Marlboro, Maryland. K.B. was playing in her room when the appellant called her into her parents' bedroom to watch a movie. After she got under

[1] Under this statute, "the three elements that the State must prove are: (1) that the defendant is a parent, family or household member, or had care, custody, or responsibility for the victim's supervision; (2) that the victim was a minor at the time; and (3) that the defendant sexually molested or exploited the victim by means of a specific act." *Schmitt v. State*, 210 Md. App. 488, 496 (2013).

[2] CR § 3-307(a)(3) prohibits a person from "engag[ing] in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim."

the covers in the bed to watch the movie, the appellant pulled down his shorts. He then pulled her pants and underwear down to her ankles and began touching her with his hand, first on the inside of her right thigh, and then inside her vagina using two fingers. His fingers were "going inside and out" for "some minutes" before he took out his hand and "started using his penis" to "go inside my vagina." She lay there in pain while his body was "dancing" back and forth over her for "some minutes." Then he stopped, rolled over, and pulled his pants up. K.B. testified that she remained silent during the incident because she feared getting in trouble, but wondered to herself why her father would do this.

K.B. got up to use the bathroom, where she wiped herself and saw "clear stuff" come out of her vagina that she had never seen before. She went into the kitchen to call her mother. She did not disclose the incident to her mother at this time. Instead, she told her that her father was yelling at her because she wanted her mother to come home, and did not know what else to say.

The second incident occurred in September 2019. Again, K.B. and the appellant were alone in the house. K.B. was in her room watching YouTube in bed when the appellant came in and lay down with her. He took off his pants, then pulled her pajama pants and underwear down. He touched the inside of her vagina with his right hand, going "in and out" for "some minutes" and causing K.B. pain. Then he stopped and got up without saying anything. K.B. did not say anything to her mother at the time because she was scared that she would not be believed.

Eventually, K.B. disclosed to her mother what had happened. The disclosure led to an investigation by child protective services and the police. Thereafter, the State charged the appellant with various offenses for the sexual abuse of K.B.

**BENCH TRIAL**

The State proceeded to trial against the appellant on four counts: sexual abuse of a minor by a family member, two counts of second-degree rape, and sex offense in the third degree. As discussed later, the appellant waived his right to a jury trial, and the case proceeded as a bench trial.

K.B. testified to the facts recounted above. The State also called her mother, a social worker who conducted K.B.'s interview after she disclosed the incidents, and a detective from the police department who conducted the criminal investigation.

The appellant chose not to testify but called several witnesses in his defense. His older sister testified, suggesting that the alleged abuse could not have occurred as K.B. claimed because K.B. was not present in the home at the time. In relevant part, the appellant's sister stated that K.B. spent the summer of 2019 at her house by the beach, not in Upper Marlboro. According to the appellant's sister, K.B. would have been with her "from June up until I think the last week of August or a couple days before that because school at the time started the last week of August," and that K.B. specifically was at her house up until "maybe that Saturday or Sunday before school." The appellant's sister explained that K.B. did not go home in the meantime, never spent the day or stayed the

night at their house in Upper Marlboro during the summer, and never stayed at home with the appellant during that time.

After trial, the court found the appellant guilty of sexual abuse of a minor by a family member and third-degree sexual offense. However, it found him not guilty of the two counts of second-degree rape because it was not persuaded beyond a reasonable doubt that "there was actual penetration in this case."

## DISCUSSION

## I.

## Waiver of Jury Trial

The appellant argues that the trial court erred in conducting a bench trial without ensuring that his waiver was knowing.[3] Before addressing the appellant's specific contentions, we present additional pertinent facts.

### A.

### Additional Background

At the start of the trial, the appellant was given advice about his right to a jury trial two times, once by each of his two trial attorneys. The initial colloquy by the first attorney was as follows:

> [FIRST COUNSEL]: Your Honor, to that end, my client, by himself, has elected to waive his right to a jury trial and would like to proceed with a bench trial before this [c]ourt.
>
> THE COURT: Okay. So [counsel], if that is the case, I'm going to have you voir dire him with regard to that as well, and then we'll be able to proceed. Okay? Go ahead.

[3] The appellant does not challenge the court's finding of voluntariness.

[FIRST COUNSEL]: Right now? Mr. Bailey, as we've discussed, you have a right to a jury trial, and you have a right to a bench trial. Whether you decide to elect a jury trial or a bench trial is 100 percent your decision, like the plea offer. And it's my understanding, after much consideration from you, that you would like to waive your right to a jury trial and proceed with the bench trial; is that true?

[MR. BAILEY]: Yes.

[FIRST COUNSEL]: Have you thought about it?

[MR. BAILEY]: Yes.

[FIRST COUNSEL]: Since, like, when?

[MR. BAILEY]: A year.

[FIRST COUNSEL]: Since, like, a year? And have we discussed it, [second counsel], me, and you?

[MR. BAILEY]: Yes.

[FIRST COUNSEL]: Okay. Has anyone promised you that if you go with the bench trial that you'll get a better result or—

[MR. BAILEY]: No.

[FIRST COUNSEL]: Are you under the influence of any drugs or alcohol that might affect your decision today?

[MR. BAILEY]: No.

[FIRST COUNSEL]: Are you making this decision voluntarily?

[MR. BAILEY]: Yes.

[FIRST COUNSEL]: Again, this is one of the five decisions that's 100 percent your decision. Are you 100 percent sure that you want to waive your right to a jury trial?

[MR. BAILEY]: Yes.

The court found that the appellant "freely, knowingly, and voluntarily waived his Constitutional right to have this matter tried before a jury." The court advised the appellant, "notwithstanding the fact that a jury trial has been waived in this case, the State will still

be held to the burden of proving that you are guilty beyond a reasonable doubt to this Court. All evidentiary issues with regard to this matter will still remain in effect, notwithstanding the fact that the matter will not be tried before a jury." The appellant indicated that he understood.

Later that day, the appellant's other attorney joined the proceedings after finishing another matter in a different courtroom. The second attorney wanted to be sure that the appellant was voir dired to her satisfaction as to the jury trial waiver. The court permitted second counsel to do so to ensure that the record was "clear." The appellant's second counsel proceeded to a second colloquy, as follows:

> [SECOND COUNSEL]: Mr. Bailey, I know [first defense counsel] voir dired you and I'm sure everything was said, but I just want to make sure concerning [sic] that you understand the significance of having a bench trial over a jury trial. When you have a bench trial, there is one person that makes the decision, period. When you have a jury trial, there are 12 individuals and if one feels that you're not guilty, it's going to be a hung jury, and if it's a hung jury, the State can either dismiss the case or try the case again.
>
> In addition, you need to understand that your appeal rights are very, very limited when you have a bench trial. When you have a bench trial, you can only ask [the appellate court], and you have to file a motion to [sic] leave to appeal and the only things that you can argue are: the jurisdiction, whether this [c]ourt had jurisdiction to listen to this case; the legality of the sentence, whether what the judge did was correct in the sentencing. An example would be the crime carries no more than ten years—
>
> [FIRST COUNSEL]: Wait, that's not true.
>
> [SECOND COUNSEL]: I'm sorry.
>
> [FIRST COUNSEL]: That's for a plea.
>
> [SECOND COUNSEL]: No, it's also for an appeal.
>
> [FIRST COUNSEL]: No, it's not; not for a bench trial. He has [indiscernible].

> [SECOND COUNSEL]: Oh, you're right we're not pleaing; okay, sorry. Sorry, strike that back, but anyway, so going back – the thing is, it's just important you understand the difference. And when it's a judge, she makes all the decisions as to what she thinks the evidence showed, compared to 12 people. So are you still inclined to accept and go forward with a bench trial?
>
> [MR. BAILEY]: Yes.
>
> THE COURT: Okay.
>
> [SECOND COUNSEL]: Okay and you've had time to think about this?
>
> [MR. BAILEY]: Yes.
>
> [SECOND COUNSEL]: And you understand the difference?
>
> [MR. BAILEY]: Yes.

The court stated that it was again satisfied that the appellant "fully understands his right to waive the right to a jury trial in this case."

**B.**

**Overview of Relevant Law**

A criminal defendant is guaranteed the right to a jury trial under both the Sixth Amendment to the United States Constitution and the Maryland Declaration of Rights. At any time prior to trial, however, he or she may waive this right and proceed by way of a bench trial. Md. Rule 4-246(b); *Boulden v. State*, 414 Md. 284, 294 (2010). "To waive properly the constitutionally protected right to trial by jury, the defendant must elect to do so by a knowing and voluntary waiver election." *Abeokuto v. State*, 391 Md. 289, 316 (2006).

The procedure for a jury trial waiver is set forth in Md. Rule 4-246(b), which provides:

> (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.

"Although Rule 4-246 provides the procedures for waiver of the right to trial by jury, the ultimate inquiry regarding the validity of a waiver is whether there has been an intentional relinquishment or abandonment of a known right or privilege." *Boulden*, 414 Md. at 295 (citation modified).

In conducting a waiver colloquy, "there is no fixed incantation required, but the court must satisfy itself that the defendant has some knowledge of the jury trial right before being allowed to waive it." *Hammond v. State*, 257 Md. App. 99, 121 (2023) (citation modified); *Boulden*, 414 Md. at 295 ("There is no fixed dialogue that must take place with a defendant to affect a valid outcome, but the court should ensure that the record demonstrates an intentional relinquishment of a known right."); *see also State v. Bell*, 351 Md. 709, 730 (1998) ("'Knowledge,' in this context means 'acquaintance' with the principles of a jury and 'knowingly' means acting consciously or intentionally in waiving the right to a jury." (citations omitted)). Ultimately, the validity of the waiver "depends upon the facts and totality of the circumstances of each case." *Abeokuto*, 391 Md. at 318.

**C.**

**Analysis**

The appellant's primary argument is that the advice given was incomplete. He argues that the waiver was not knowing because he was not advised that: unless he waived

the right to trial by jury, the case would be tried to a jury; the jury would be drawn from residents of the county, or that they would be selected from a list of registered voters, licensed drivers, or holders of Maryland-issued ID cards; or a valid jury verdict would require the unanimous agreement of all jurors. He also argues that he was not given a description of the process for selecting jurors or his attorneys' role in selecting them. Nor was he advised that the waiver would be final. In sum, the appellant claims that the advice given to him failed to convey sufficient information for the trial court to find that his jury trial was made knowingly, "either under the Sixth Amendment or Rule 4-246."

The State responds preliminarily that review is limited to the appellant's constitutional argument; he failed to preserve any complaints concerning his jury trial waiver as it related to Rule 4-246. We agree. If a defendant does not contemporaneously object to the court's acceptance of a jury trial waiver, any error under Maryland Rule 4-246 is unpreserved. *Hammond*, 257 Md. App. at 119 ("[T]o challenge a failure to comply with Rule 4-246 on appeal, . . . there must be an objection raised in the trial court."). On the other hand, regardless of whether the defendant objected at trial, the defendant may raise, on appeal, a claim of violation of their constitutional right to a jury trial because the waiver of a constitutional right must appear affirmatively in the record. *See Biddle v. State*, 40 Md. App. 399, 407 (1978).

Turning to his constitutional argument, we conclude that the appellant's jury trial waiver was knowing. The totality of the circumstances demonstrates that the appellant possessed "some knowledge" of what his jury trial right entailed before he waived it.

*Martinez v. State*, 309 Md. 124, 134 (1987); *see Bell*, 351 Md. at 730 (noting that a criminal defendant's knowledge of principles of a jury trial need not be "full," "complete," or "entire" to support a valid waiver). In his brief, the appellant acknowledges that he was told that he had the right to a jury trial and that the choice between a court trial and a jury trial was his to make. He further acknowledges that a jury would consist of twelve individuals and that if one of the jurors "feels that you're not guilty, it's going to be a hung jury, and if it's a hung jury, the State can either dismiss the case or try the case again." Although the term "unanimous" was not used, this advice implied that a guilty verdict requires unanimity, because, as counsel explained, even one dissenting juror could result in a hung jury.

Moreover, the appellant confirmed on the record that he had thought about this election for a year with the consultation of both of his counsel. *See Hammond*, 257 Md. App. at 123 ("We may presume, when an attorney states in court that the defendant wants to waive the right to a jury trial, that the attorney has advised of the advantages and disadvantages of having the case evaluated by a judge instead of a jury."); *Kang v. State*, 163 Md. App. 22, 36 (2005) ("[W]e may presume that criminal defendants represented by counsel have been informed of their constitutional rights."). The appellant's statement that he was "100 percent sure" about waiving his right to a jury trial indicates that he had carefully considered his decision over a significant period and had taken his counsel's advice seriously.

The appellant cites the Committee note to Rule 4-246 to support his claim that he was not apprised of the information contained in that note. The Committee note states that:

> In determining whether a waiver is *knowing*, the court should seek to ensure that the defendant understands that: (1) the defendant has the right to a trial by jury; (2) unless the defendant waives a trial by jury, the case will be tried by a jury; (3) a jury consists of 12 individuals who reside in the county where the court is sitting, selected at random from a list that includes registered voters, licensed drivers, and holders of identification cards issued by the Motor Vehicle Administration, seated as jurors at the conclusion of a selection process in which the defendant, the defendant's attorney, and the State participate; (4) all 12 jurors must agree on whether the defendant is guilty or not guilty and may only convict upon proof beyond a reasonable doubt; (5) if the jury is unable to reach a unanimous decision, a mistrial will be declared and the State will then have the option of retrying the defendant; and (6) if the defendant waives a jury trial, the court will not permit the defendant to change the election unless the court finds good cause to permit the change.

*Id.* at (b), Committee Note.

However, the Committee prefaces the note with an acknowledgment that "the law does not require the court to use a specific form of inquiry in determining whether a defendant's waiver of a jury trial is knowing and voluntary," and "[w]hat questions must be asked will depend upon the facts and circumstances of the particular case." *Id.*; *see Aguilera v. State*, 193 Md. App. 426, 445 (2010) (noting that the contents of the Committee note are presented as guidance, but that a failure to exactly follow the note's contents does not necessitate reversal of a conviction). Indeed, our appellate courts have upheld a jury trial waiver where the defendant was not advised of all information listed in the note. *See, e.g.*, *Bell*, 351 Md. at 730 (upholding a jury waiver where the defendant was told that a jury was comprised of twelve jurors and that the charges against him must be proved beyond a

reasonable doubt, but he was not advised that the jury's verdict must be unanimous); *State v. Hall*, 321 Md. 178, 183 (1990) (rejecting expressly the proposition that a jury trial waiver cannot be knowing absent an explanation of "the details of the jury selection process"); *Dedo v. State*, 105 Md. App. 438, 451 (1995) (holding that the defendant's jury trial waiver was knowing even though he was not advised that he could participate in the jury selection process and that the jurors would be selected from his community), *rev'd on other grounds*, 343 Md. 2 (1996). For the reasons stated, the appellant's jury trial waiver was knowing.[4]

**II.**

**Sufficiency of Evidence**

The appellant challenges the legal sufficiency of the evidence to convict him of sexual abuse of a minor and third-degree sex offense for three reasons. First, he claims that he did not have the opportunity to commit the crime alleged because, according to the appellant's sister, K.B. spent the entire summer of 2019 with her. Second, the appellant contends that K.B.'s testimony was not sufficiently reliable to establish that the crimes were committed, citing one example from K.B.'s testimony where she admitted to lying to

[4] In a passing remark, the appellant adds that a portion of the advice was erroneous. However, he does not identify what information was supposedly erroneous or provide any supporting legal authority for this argument. *See* Md. Rule 8-504(a)(6) (requiring argument in support of a party's position on each issue raised in their brief); *Darling v. State*, 232 Md. App. 430, 465–66 (2017) (declining to address an argument raised in a single sentence and without support for the position). To the extent the appellant is referring to second counsel's advice regarding his right to a limited appeal, her co-counsel quickly corrected her, which prompted second counsel to retract the erroneous advice. That mistake did not rise to the level of misinformation that would undermine the court's finding that the appellant's waiver was made knowingly.

get her mother to come home. Third, the appellant claims that the court's verdict indicated that it did not believe a portion of K.B.'s testimony.

The appellant's contentions invite us to reweigh the evidence and assess the credibility of the witnesses, namely, K.B. and the appellant's sister. However, as we have explained,

> A fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony. Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency, and we do not weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact.

*Pryor v. State*, 195 Md. App. 311, 329 (2010) (internal citation omitted). Thus, the trial court was entitled to accept all, part, or none of the testimony from K.B. and the appellant's sister, and to resolve any contradictions and inconsistencies in the evidence. The court evidently credited K.B.'s testimony over that of the appellant's sister, resolving inconsistencies and making credibility determinations in K.B.'s favor regarding the offenses at issue.

The test for the legal sufficiency of evidence is whether, viewing the evidence in the light most favorable to the prosecution, we determine that *any* rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Id.* at 328; *Hammond*, 257 Md. App. at 125. We conclude that K.B.'s testimony, as detailed above, provided a basis to sustain the convictions for sexual abuse of a minor by a family member and third-degree sexual offense.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**