Circuit Court for Howard County
Case No.: C-13-CR-22-000536

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1125

September Term, 2023

DERON BARNETT

v.

STATE OF MARYLAND

Wells, C.J.
Reed,
Tang

JJ.

Opinion by Reed, J.

Filed: June 13, 2025

Appellant, Deron Barnett, was indicted in the Circuit Court for Howard County, Maryland, and charged with two counts of sexual abuse of a minor, his daughter, three counts of second-degree rape, three counts of incest, and four counts of third-degree sexual offense. After Appellant waived his right to a jury trial, the State nol prossed the third-degree sexual offense counts. At the conclusion of the bench trial, the court convicted Appellant on all remaining counts. The court subsequently sentenced Appellant to an aggregate term of one hundred twenty (120) years, with all but sixty (60) years suspended. On this timely appeal, Appellant asks us to address whether the trial court failed to ensure that his jury trial waiver was knowing and voluntary. For the following reasons, we shall reverse.[1]

BACKGROUND

Appellant does not challenge the sufficiency of the evidence to sustain the convictions. Therefore, our summary of the trial record is intended to provide context for the issues raised in this appeal, rather than a comprehensive review of the evidence presented. *See Thomas v. State*, 454 Md. 495, 498-99 (2017) ("Because the issue dispositive of this appeal does not require a detailed recitation of the facts, we include only

[1] Appellant has a second criminal case pending on appeal in this Court. *Barnett v. State*, No. 1592, September Term 2023. That case concerns Appellant's convictions following a bench trial before a different judge of second-degree rape and sexual abuse of his other daughter, a minor, as well as other related counts. (MDEC, Case Number C-13-CR-23-000192). After he was sentenced there to an aggregate eighty (80) years, Appellant appealed to this Court. The issues pending on appeal in Case Number 1592 concern Appellant's jury trial waiver in that case, as well as allegations that his sentences for second degree rape and incest are illegal.

a brief summary of the underlying evidence that was established at trial"); *accord Parks v. State*, 259 Md. App. 109, 113 (2023).

Appellant's then 17-year-old daughter testified that, on November 2, 2022, when she was 16 years old, Appellant woke her up, "performed sexual intercourse on me[,]" and placed his penis in her vagina. She testified that she felt "helpless and scared" and "didn't know what to do[,]" noting elsewhere in her testimony that Appellant often beat her with a broom, a dustpan, and a belt. He also raped her a few days earlier, on October 30, 2022. She testified that he raped her "[m]aybe two days a week." This occurred often, over a number of years, despite her asking him to stop the assaults. In fact, she testified that the first rape occurred when she was nine years old. There was additional evidence supporting the remaining sex offense charges.

We may include additional detail in the following discussion.

DISCUSSION

Appellant's contention on appeal is that he was misinformed about his constitutional right to a jury trial and, therefore, his waiver of that right was not knowing or voluntary. Specifically, when informing him of the right to a jury, the court stated that: "All 12 must either find you guilty beyond a reasonable doubt or not guilty beyond a reasonable doubt." Appellant argues that the court erred because, whereas the burden of proof rests with the State to prove his guilt beyond a reasonable doubt, requiring the jury to find him "not guilty beyond a reasonable doubt" implies that he had the burden of proving his innocence.

Although the State concedes that incorrect or misleading advice may preclude a knowing waiver of the right to a jury trial [Brief of Appellee at 5], it disagrees with the

merits of Appellant's argument. The State argues, considered in context, that: (1) we presume the tone or emphasis of the court's remarks should be considered under the presumption of regularity; (2) the court also informed Appellant that it would "make a decision as to your guilt beyond a reasonable doubt or not being guilty beyond a reasonable doubt;" and, (3) Appellant was represented by counsel and there was no reaction or objection on the grounds raised. Thus, the State disagrees with Appellant that he was misadvised that a jury would have to find him "*not guilty* beyond a reasonable doubt," and instead argues that the court advised that a jury would have to find him *not* "guilty beyond a reasonable doubt."[2] The entire colloquy between the court and Appellant was as follows:

> THE COURT: Yes. So let me just ask you this officially then on the record.
>
> Are you waiving your right to a jury trial?
>
> In other words, you have an absolute right to have a jury trial. And a jury consists of 12 men and women selected from the Motor Voter rules [sic] of Howard County. You, your attorney, and the assistant state's attorney will be – will participate in selection of those jurors.
>
> All 12 must either find you guilty beyond a reasonable doubt or not guilty beyond a reasonable doubt. If there is -- one juror disagrees or whatever, then that would be a hung jury and the State would reserve a right to try you again and again and again.
>
> But -- so it's my understanding that you wish to give up your right to a jury trial where 12 people would decide this case rather than a judge such as myself deciding this case?
>
> THE DEFENDANT: I --

[2] There is no dispute that Appellant's constitutional claim is preserved. *See Hammond v. State*, 257 Md. App. 99, 121 (2023) ("Unlike a claim that the procedure in Rule 4-246(b) was not followed, a claim of a constitutional violation of the right to a jury trial does not require an objection to preserve the claim").

THE COURT: I just want to make sure we put it on the record, make it clear.

THE DEFENDANT: I wasn't waiving my right. I was just requesting that the judge look into this case because...

THE COURT: Okay. Well, we're here to determine right now whether you want me to preside --

THE DEFENDANT: Yes.

THE COURT: -- over the case and make a decision as to your guilt beyond a reasonable doubt or not being guilty beyond a reasonable doubt. Or do you want 12 members from the Motor Voters rules [sic] of Howard County to decide whether you were guilty beyond a reasonable doubt or not guilty. So that's a jury trial with 12 members.

THE DEFENDANT: Yes.

THE COURT: A court trial is me. I'll listen to all of the evidence --

THE DEFENDANT: Yeah.

THE COURT: -- and make a determination. So I'll ask you do you wish to waive your right to a jury trial and let 12 decide or you wish to have me to decide?

THE DEFENDANT: I wish to have you decide.

THE COURT: Okay then. All right then. …

The Sixth Amendment of the United States, as well as Articles 5 and 21 of the Maryland Declaration of Rights, ensures a criminal defendant a right to a jury trial. *Abeokuto v. State*, 391 Md. 289, 316 (2006).[3] A defendant may elect to waive their right to a jury trial and instead be tried by the court. *Id.* However, a defendant may only properly

[3] Maryland Declaration of Rights Articles 21 and 24 also guarantee a party's right to a jury trial in Maryland. Md. Decl. of Rights Art. 21, 24; *see also Kang v. State*, 393 Md. 97, 105 (2006); *Abeokuto*, 391 Md. at 316.

waive their right to a jury trial if they waive this right knowingly and voluntarily. *Id.*; *Smith v. State*, 375 Md. 365, 377-80 (2003). According to the Supreme Court of the United States, a waiver constitutes "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *accord Winters v. State*, 434 Md. 527, 537 (2013) (citing *Boulden v. State*, 414 Md. 284, 295 (2010)). Courts have defined knowingly as synonymous with "intelligently" and "having or showing awareness or understanding." *Nalls v. State*, 437 Md. 674, 689 (2014) (citation omitted).

Although the defendant must have knowledge of the right to a jury trial before waiving this right, full knowledge is not required. *State v. Bell*, 351 Md. 709, 720 (1998). As such, the court need not recite "any fixed incantation" to ensure that the defendant knowingly waives their jury trial right. *Martinez v. State*, 309 Md. 124, 134 (1987). Whether an accused has made an intelligent and knowing waiver of the right to a jury trial depends on the facts and circumstance of each case. *Abeokuto*, 391 Md. at 318. Additionally, the court need not require explicit inquiry into voluntariness of the waiver, absent any triggering facts. *Aguilera v. State*, 193 Md. App. 426, 442 (2010). Nonetheless, the court must ensure that the defendant's waiver is intentional and is not a product of duress or coercion. *State v. Hall*, 321 Md. 178, 182-83 (1990); *see also* Maryland Rule 4-246 (addressing the procedure applicable to jury waivers).

Although the question presented concerns Appellant's constitutional right to a jury trial, the Committee Note to Rule 4-246 is instructive as to what inquiry the court should perform before accepting a waiver. Emphasized is the provision with respect to the burden of proof:

> **Committee note**: Although 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, the record must demonstrate an intentional relinquishment of a known right. What questions must be asked will depend upon the facts and circumstances of the particular case.
>
> 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.
>
> In determining whether a waiver is *voluntary*, the court should consider the defendant's responses to questions such as: (1) Are you making this decision of your own free will? (2) Has anyone offered or promised you anything in exchange for giving up your right to a jury trial? (3) Has anyone threatened or coerced you in any way regarding your decision? and (4) Are you presently under the influence of any medications, drugs, or alcohol?

(Emphasis added).

Pertinent to the question presented, in cases of erroneous advice from the trial court, our Supreme Court has established that if the erroneous advice could have misled the defendant and influenced their decision to waive their right to a jury trial, then the defendant's jury trial waiver was not knowing and voluntary. *See Winters,* 434 Md. at 547. In *Winters*, once the court learned of the defendant's desire to have a bench trial, it

conducted a colloquy to examine whether his waiver of a jury trial was knowing and voluntary. *Id.* at 530-31. The court asked numerous questions, but in pertinent part, it asked,

> And do you understand that for such a jury to convict you or to find you either criminally responsible or not criminally responsible, they must unanimously, all together, vote to convict you or find you criminally responsible or not criminally responsible upon which the evidence they feel proves same by a reason—beyond a reasonable doubt? Do you understand that?

Id. at 532.

The Supreme Court found this advice to be erroneous. *Id.* at 538. It then held that the defendant's jury trial waiver could not be knowing and voluntary because the court's erroneous advice "may have misled [the defendant] to believe that the task of proving that he was not criminally responsible in a jury trial would be a more difficult task than it actually is under Maryland law." *Id.* It explained that this erroneous advice made "a jury trial appear less attractive and would reasonably influence Winters's decision to waive his right." *Id.* The court also noted that, according to the record of the hearing, no one corrected the court's erroneous advice. *Id.* at 539-40. The court also explained that the erroneous advice made the waiver unknowing even though "without the erroneous statement, there would have been sufficient information for a knowing waiver[.]" *Id.* at 542.

Thus, the appropriate standard to determine whether a defendant's jury trial waiver was knowing and voluntary despite erroneous advice from the court is whether the erroneous advice may have misled the defendant and influenced their decision to waive their jury trial right, where no one corrected the misstatement before the defendant's waiver. *Id.* at 544. Accordingly, to show that his jury trial waiver was not knowing and

voluntary, the Appellant must show that 1) the trial court's advice was erroneous, 2) the erroneous advice may have misled him, and 3) the erroneous advice may have influenced his decision to waive a jury trial.

We first consider whether the trial court's advice was erroneous. As previously set forth, the trial court stated, "All 12 must either find you guilty beyond a reasonable doubt or not guilty beyond a reasonable doubt." "The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every element of an offense charged beyond a reasonable doubt." *Savoy v. State*, 420 Md. 232, 246-47 (2011) (citing *In re Winship*, 397 U.S. 358, 364 (1970))*; accord Harris v. State*, 458 Md. 370, 391 (2018). As explained by the Maryland Supreme Court in a case concerning a defective jury instruction, "[i]n a criminal prosecution, the State bears the burden of proof beyond a reasonable doubt on all elements of the crimes charged and a defendant has no obligation to testify, to call witnesses, or to produce evidence." *Harris*, 458 Md. at 377*; see also* Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* ("MPJI-Cr") 2:02 at 7-8, 240-41 (3d ed. 2024) (Presumption of Innocence and Reasonable Doubt). Further, "in order to convict the defendant of the charged crime the State must prove the guilt of the defendant beyond a reasonable doubt, and that the jury has a duty to acquit in the absence of such proof." *Ruffin v. State*, 394 Md. 355, 356 (2006) (citing *Merzbacher v. State*, 346 Md. 391, 398 (1997))*; see also Kazadi v. State*, 467 Md. 1, 45-46 (2020) ("Innocence is presumed in a criminal case until the contrary is proved." (quoting *Lilienthal's Tobacco v. United States*, 97 U.S. 237, 267 (1877))).

Appellant argues that the court's statement in this case amounted to error and was misleading "because it implied that Mr. Barnett might have some burden to prove his innocence." *Ruffin* is instructive. There, the Maryland Supreme Court addressed the need to avoid ambiguity when instructing on the reasonable doubt standard and, in fact, held that trial courts should give an instruction which "closely adheres" to the pattern instruction, MPJI-Cr 2:02. *Ruffin*, 394 Md. at 373. The Supreme Court's concerns about ambiguities in a reasonable doubt jury instruction are similar to our concerns about an ambiguous explanation of the burden of proof in a criminal trial, as was the case here. As the *Ruffin* Court explained, "[h]uman experience has shown that language is, at best, an imperfect form of communication. Reasonable doubt is a vague and difficult concept that must be utilized by jurors in the demanding intellectual process of interpreting evidence presented to them in the course of a criminal proceeding." *Ruffin*, 394 Md. at 366 (quoting *Merzbacher*, 346 Md. at 404).

The State counters that we should apply the presumption of regularity and conclude the advisement was not erroneous. *See Kang*, 393 Md. at 113 ("This Court recognizes the presumption that the actions of a trial court ordinarily are correct and the party claiming error bears the burden of rebutting that presumption"). The State also notes the following: this was an isolated comment; the Appellant was represented by counsel; and there was no objection or reaction to the advisement. The State cites *Spence v. State*, 296 Md. 416, 424 (1983), the dissent from *Henry v. State*, 20 Md. App. 296, 315 (Davidson, J., dissenting), *vacated in part*, 273 Md. 131 (1974), and *Couser v. State*, 31 Md. App. 401, 403-04, *cert.*

denied, 278 Md. 719 (1976), to support its position. We distinguish *Spence* and *Henry* before discussing *Couser*.

In *Spence,* the Maryland Supreme Court concluded the trial court erred by limiting defense counsel's right to present closing argument before the verdict. *Spence*, 296 Md. at 423. The Court stated, "He is constitutionally entitled to an opportunity before that moment to attempt to convince the trier of fact that he is innocent or that he is not guilty beyond a reasonable doubt. Depriving him of this opportunity is tantamount to shortening his day in court and denies him a fair trial." *Spence*, 296 Md. at 424. Clearly, the Court's conclusion using the term "not guilty beyond a reasonable doubt" is distinguishable from a trial court's advisement during the jury trial waiver inquiry that a jury would have to find the defendant "not guilty beyond a reasonable doubt."

In *Henry,* the dissent disagreed with the majority's view that the sentencing judge could consider acquitted charges (murder, assault with intent to murder, and armed robbery) when sentencing the defendant for the remaining charges (larceny of an automobile and receipt of stolen cash). The dissent explained, "An acquittal does determine that a person is not guilty beyond a reasonable doubt of the crimes of which he was acquitted and this determination is conclusive on the issue of his guilt." *Henry*, 20 Md. App. at 315. (Davidson, J., dissenting). Again, this statement by a dissenting judge in an appellate opinion is inapposite to the question presented.

Finally, *Couser* presents a case where the question was presented but not decided. There, during the advisement by trial counsel of Couser's right to a jury trial, counsel advised Couser that the jurors "would also have to all agree beyond a reasonable doubt that

you were in fact either guilty or not guilty. If all twelve of them did not agree – You could never be found guilty unless all twelve agreed." *Couser*, 31 Md. App. at 403.[4] Couser claimed "the error in the information furnished by his counsel that the jurors would have to agree beyond a reasonable doubt that he was not guilty … vitiated his election to have the case tried before the court." *Id.* at 404. We did not decide the issue, stating:

> Appellant points to the error in the information furnished by his counsel that the jurors would have to agree beyond a reasonable doubt that he was not guilty and alleges that this misinformation vitiated his election to have the case tried before the court. We do not agree.
>
> *State v. Zimmerman*, 261 Md. 11, 273 A.2d 156 (1971) established that a post conviction proceeding is usually the proper way to determine the validity of a waiver of a jury trial. We think this case illustrates the sound reasoning of *Zimmerman, supra*. Whether or not the single misstatement in counsel's explanation of a jury trial was sufficient to mislead the appellant depends on what information counsel had imparted to the accused prior to trial and what information the accused had otherwise acquired. In view of the appellant's extensive involvement in many prior criminal proceedings, as shown by the record, it is not likely appellant was actually mislead, but if he were he is free to establish that fact in post conviction procedures.

Id. at 404.

Although *Couser* was decided over thirty-five years prior to *Winters*, the consideration of whether or not the defendant was misled remains the same. However, in *Winters*, a case where our Supreme Court reversed because the trial judge misinformed the defendant about the standard of proof for entering a not criminally responsible plea, the Court made clear there do not need to be "clear indications of reliance on erroneous advice for those misstatements to render a waiver unknowing." *Winters*, 434 Md. at 534-35, 544.

[4] As the State notes, the full quote does not appear in Westlaw but is provided in full in the official reporter.

Further, the *Winters* Court disagreed with the State's argument that "where erroneous or ambiguous advice is given to a represented defendant, reversal is only necessary if there is evidence in the record that the defendant relied upon the misstatements." *Id.* at 545.

In addition to this distinction between *Couser* and current law under *Winters* about what the record needs to show, we note that, whereas in *Couser* it was defense counsel that advised that the jurors "would also have to all agree beyond a reasonable doubt that you were in fact either guilty or not guilty," here, it was the trial judge that advised that "[a]ll 12 must either find you guilty beyond a reasonable doubt or not guilty beyond a reasonable doubt." Certainly, the advice with respect to the jury trial waiver may come from either defense counsel, the prosecutor, or the court, but "it is the trial court that 'bears the ultimate responsibility for ensuring that the accused has tendered a valid waiver.'" *Abeokuto*, 391 Md. at 317 (quoting *Martinez*, 309 Md. at 133 n.9).

We conclude that the court's advisement to Appellant in this case was erroneous. The burden of proving that a criminal defendant is guilty beyond a reasonable doubt is in all cases with the State and the suggestion that the defendant bears any responsibility to prove he is not guilty beyond a reasonable doubt undermines that standard.

Turning next to whether Appellant was likely to have been misled by the misadvisement, we consider the facts and circumstances of the court's entire exchange with Appellant in this case. Here, the court informed Appellant that he had a right to a jury trial; that the jury would comprise twelve individuals selected from the Motor Voter list for Howard County; that he, his attorney, and the prosecutor would participate in the selection of the jury; that all twelve would have to find him guilty beyond a reasonable doubt or not

guilty beyond a reasonable doubt; and that, if they failed to agree unanimously that would result in a hung jury and the State could retry him "again and again and again." We further note that, although there were no facts suggesting duress or coercion, the court did not inquire whether Appellant's waiver was voluntary as required by our Supreme Court and as suggested by the Committee Note to Rule 4-246. Namely, there was no inquiry whether Appellant was making the decision of his own free will, whether he was promised or offered anything in exchange for giving up his right to a jury trial, whether he was threatened or coerced into making his decision, and whether he was under the influence of any medications, drugs, or alcohol. *See Abeokuto*, 391 Md. at 317-18 ("The trial court 'must, however, 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'") (citation omitted); Committee Note to Md. Rule 4-246.

We also note that, immediately after the advisement was given, Appellant initially stated that "I wasn't waiving my right. I was just requesting that the judge look into this case because …" before the court returned to whether he wanted the court to preside and decide "as to your guilt beyond a reasonable doubt or not being guilty beyond a reasonable doubt." The court also asked whether Appellant wanted a jury of twelve members selected from the Motor Voter rolls "to decide whether you were guilty beyond a reasonable doubt or not guilty." After this, Appellant stated "I wish to have you decide."

Considering the facts and circumstances, we are persuaded that there was a possibility that Appellant was misled by this advice. Although the court explained the right to a jury trial, the court misadvised Appellant twice during the exchange on the burden of

proof in a manner that suggested he could only be found "not guilty beyond a reasonable doubt." This is error. We also note that the concept of reasonable doubt was never explained to the Appellant. Although we are unaware of a case holding that such an explanation is required before a jury trial waiver may be deemed knowing and voluntary, there is a possibility that the failure to define the burden of proof correctly under the unique circumstances of this case may have contributed to Appellant's possible misunderstanding of his constitutional right. The erroneous advice may have influenced Appellant to forego his right to a jury and elect a court trial.

In sum, we concur with Appellant counsel's argument in its opening brief, citing *Winters*, 434 Md. at 539, and stating:

> The same outcome is required here. The trial court told Mr. Barnett that if he elected a jury trial, all twelve jurors would have to be convinced beyond a reasonable doubt that he was not guilty before they could acquit him. The court's misstatement therefore may have misled Mr. Barnett to believe that securing an acquittal in a jury trial would be a more difficult task than it actually is. There is a significant difference between a defendant convincing twelve people beyond a reasonable doubt that he is not guilty and a defendant merely having to convince twelve people that the State has not met its high burden to prove his guilt beyond a reasonable doubt. To the extent the court's advice implied that Mr. Barnett bore an affirmative burden to prove his innocence, there is an even starker difference between a defendant affirmatively proving he is not guilty and convincing the jury the State did not meet its burden of proof. As such, the court's misstatement made a jury trial appear less attractive than it actually was. "By giving [Mr. Barnett] erroneous information that made exercising [his] constitutional rights to a jury trial less attractive, the trial judge may have misled [Mr. Barnett] and, thereby, influenced his decision to waive his right to a jury trial." *Winters*, 434 Md. at 539.

JUDGMENT REVERSED AND REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY HOWARD COUNTY.