

Circuit Court for Baltimore City
Case No. 1116221034

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1179

September Term, 2017

MATTHEW KISCADEN

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 3, 2018

*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 Baltimore City, Matthew Kiscaden, appellant, was convicted of two counts of illegal possession of a firearm, two counts of illegally transporting a handgun in a vehicle, possession of marijuana with intent to distribute, possession of CDS paraphernalia, and various traffic offenses. On appeal, he claims that the trial court's failure to determine that he had knowingly and voluntarily waived his right to a jury trial violated his right to a jury trial under the United States and Maryland Constitutions and violated Maryland Rule 4-246. For the reasons that follow, we reverse and remand for a new trial.

On the morning of Kiscaden's trial, the following exchange occurred between defense counsel and the court:

[THE COURT]: All right. Thank you. What's the plea?

[DEFENSE COUNSEL]: The plea is not guilty.

[THE COURT]: And the election?

[DEFENSE COUNSEL]: I believe we're going to take the Judge trial.

[THE COURT]: All right. Any preliminary motions?

[DEFENSE COUNSEL]: I don't believe so?

[THE COURT]: Do you have any preliminary motions?

[THE STATE]: No, Your Honor, except sequestration.

After the witnesses were sequestered, the State gave its opening statement and there was no further mention of Kiscaden waiving his right to jury trial. We cannot discern from the record that such a waiver occurred at any other point in the proceedings and the State

concedes that, “after making the appropriate inquiry,” it has determined that “a proper jury trial waiver had not been undertaken at prior circuit court appearances.”

The waiver of the right to a jury trial must be “knowledgeable and voluntary,” that is, that there has been an intentional relinquishment or abandonment of a known right or privilege. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). It is now long-established that a court need not advise the accused of the details of a jury trial or of the jury selection process, but it 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) (quotation marks and citations omitted) (emphasis in original). Thus, although courts need not engage in any “specific litany,” for a jury trial waiver to pass constitutional muster, the record must show that the defendant has some information regarding the nature of a jury trial. *Abeokuto v. State*, 391 Md. 289, 320 (2006) (quotation marks and citation omitted). “Whether there is an intelligent, competent waiver must depend on the unique facts and circumstances of each case.” *Valiton v. State*, 119 Md. App. 139, 148, *cert. denied*, 349 Md. 495 (1998) (quotation marks and citation omitted). “If the record in a given case does not disclose a knowledgeable and voluntary waiver of a jury trial, a new trial is required.” *Smith v. State*, 375 Md. 365, 381 (2003) (citations omitted).

Kiscaden contends, and the State agrees, that there is no evidence in the record indicating that he knowingly and voluntarily relinquished his right to a jury trial. We agree. This is not a case where the trial court failed to comply with the exacting requirements of Maryland Rule 4-246. Rather, according to the record before us, the court did not question

Kiscaden regarding his understanding of his jury trial rights at all. Moreover, defense counsel did not indicate that he had advised Kiscaden of those rights. In fact, it was defense counsel, not Kiscaden, that requested the bench trial. Consequently, a new trial is required.

See Smith, 375 Md. At 381.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED AND
CASE REMANDED TO THAT COURT
FOR A NEW TRIAL. COSTS TO BE PAID
BY THE MAYOR AND CITY COUNCIL OF
BALTIMORE.**