

Circuit Court for Baltimore County
Case No. C-03-CR-23-001182

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1256

September Term, 2024

JASON THOMAS MOORE

v.

STATE OF MARYLAND

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 7, 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).

On January 10, 2024, the Circuit Court for Baltimore County found Jason Thomas Moore, Appellant, guilty of one count of sexual abuse of a minor, two counts of third-degree sexual offense, and two counts of second-degree assault. For sexual abuse of a minor, the court sentenced Mr. Moore to fifteen years, with all but time served suspended, and five years' supervised probation. With respect to each of the other four counts, the court sentenced Mr. Moore to time served. This appeal followed.

Mr. Moore presents the following questions for our review,¹ which we have rephrased as,

- I. Did the trial court err in finding that Mr. Moore's waiver of his right to a jury trial was knowing?
- II. Did the trial court err in allowing references at trial to Mr. Moore's post-arrest silence?
- III. Did the trial court err in failing to merge Mr. Moore's remaining convictions into his conviction for sexual abuse of a minor?

For the reasons that follow, we answer these questions “no,” and affirm the judgments of the circuit court.

¹ Appellant presented his questions as follows:

- I. Was Mr. Moore's waiver of his constitutional right to a jury trial shown to be knowing as required by the Sixth and Fourteenth Amendments to the United States Constitution and Articles 5, 21, and 24 of the Maryland Declaration of Rights?
- II. Did the court err in permitting the state to refer to Mr. Moore's pre-arrest silence?
- III. Did the court err in failing to merge all remaining convictions and sentences into the conviction and sentence for sexual abuse of a minor?

BACKGROUND

On March 13, 2023, Mr. Moore was indicted for one count of sexual abuse of a minor, two counts of sexual offense in the third degree, and two counts of assault in the second degree. These charges stemmed from allegations made by Mr. Moore’s daughter, S.² At trial, S. testified that when she was five or six years old, her father, Mr. Moore, called her into the bathroom and asked her to touch his penis. S. testified that this happened on several occasions, “usually every time [she] visited” Mr. Moore at his house. S. disclosed these incidents several years later to a school health teacher, after which the school contacted the police. Mr. Moore denied that these incidents ever occurred.

Waiver of Right to Jury Trial

Before proceeding to trial, Mr. Moore opted to waive his right to a jury trial in favor of a bench trial. The court then asked defense counsel to “qualify” Mr. Moore. Defense counsel then engaged Mr. Moore in the following colloquy.

[DEFENSE COUNSEL]: Can you state your full name for the record?
[MR. MOORE]: Jason Thomas Moore.
[DEFENSE COUNSEL]: How many years of age are you today?
[MR. MOORE]: Fifty-two.
[DEFENSE COUNSEL]: How far did you go in school?
[MR. MOORE]: Two years of college.
[DEFENSE COUNSEL]: Safe to say you read, write, understand the English language, correct?

² Pursuant to Maryland Rule 8-121(c), in the interest of confidentiality and protecting the privacy interests of the child involved, we refer to her using an initial different than her own.

- [MR. MOORE]: Absolutely.
- [DEFENSE COUNSEL]: Under the influence of any drugs and/or alcohol today?
- [MR. MOORE]: Absolutely not.
- [DEFENSE COUNSEL]: Care of a psychiatrist or psychologist?
- [MR. MOORE]: No, sir.
- [DEFENSE COUNSEL]: Anything impeding your ability to understand right and wrong while we are here?
- [MR. MOORE]: Nothing. Nothing.
- [DEFENSE COUNSEL]: More importantly, what we have let Your Honor know and we let the State know is that it's our position, from our conversations and speaking directly with you, you would like this matter to be set in before a bench trial, before just a judge, no jury?
- [MR. MOORE]: Absolutely.
- [DEFENSE COUNSEL]: And so that would take out the jury process, which would seat 12 people in the jury box to our right, hear that process of voir dire and selecting jurors from the Baltimore County motor/voter polls and foregone for a bench trial. Meaning, that the judge would sit in both fact and law and make a decision on this matter. Is that the decision you would like to make?
- [MR. MOORE]: That is my decision.
- [DCOUNSEL]: No one has forced, coerced you, or told you anything to hold you down to make you do this?
- [MR. MOORE]: Nobody has.
- [DEFENSE COUNSEL]: Your Honor, I think he is qualified.

Questions about Pre-Arrest Silence

Mr. Moore, along with several others, testified as a witness before the court.

During the State's cross-examination of Mr. Moore, the prosecutor asked the following questions.

[PROSECUTOR]: Is it not true that you told the detective that you would confer with an attorney before agreeing to be interviewed in the case?

[MR. MOORE]: No.

[PROSECUTOR]: Okay. And it's also not true that you made no other attempt to contact the detective?

[MR. MOORE]: That's true. I never made another contact while -- well, whenever.

[PROSECUTOR]: So you never told the detective that you weren't going to talk to her?

[MR. MOORE]: I never did. As a matter of fact, when she called me I knew what it was from because the CPS already got ahold of me. And I told her over the phone, I think it was in the report how I adamantly denied it and how offended I was. Same thing when she came to pick me up on a warrant.

Defense counsel raised no objections to the line of questioning at trial.

Conviction and Sentencing

Following the completion of the bench trial on January 1, 2024, the court found Mr. Moore guilty on all counts. For sexual abuse of a minor, the court imposed a sentence of fifteen years, suspending all but time served, and five years' supervised probation. As a condition of probation, the court ordered Mr. Moore to serve one year of additional private home detention. As to the other four counts, the court sentenced Mr. Moore to time served on each.

DISCUSSION

I. Waiver of Right to Jury Trial

Mr. Moore first argues that the court erred in determining that he was “qualified” to waive his right to a jury trial. Instead, defense counsel’s colloquy with Mr. Moore was

insufficient to ensure a knowing waiver of Mr. Moore’s constitutional right, thereby violating his right to a jury trial as established by the Sixth Amendment of the Constitution as well as Article 21 of the Maryland Declaration of Rights.³ Specifically, Mr. Moore contends that the colloquy did not sufficiently discuss the rights that come along with a jury trial to ensure that Mr. Moore truly understood what he was waiving— “[n]othing was said of the requirement that the ‘decision’ must meet the beyond a reasonable doubt standard that the state would be obligated to meet. Nor was Mr. Moore told that, should he choose a jury trial, all twelve members would have to reach a unanimous conclusion.” The State argues that the colloquy on the record in combination with the fact that Mr. Moore was represented by counsel was sufficient to ensure a knowing waiver of his right to a jury trial.

The portion of the colloquy that implicates Mr. Moore’s knowledge of his jury trial right was follows:

[DEFENSE COUNSEL]: More importantly, what we have let Your Honor know and we let the State know is that it’s our position, from our conversations and speaking directly with you, you would like this matter to be set in before a bench trial, before just a judge, no jury?

[MR. MOORE]: Absolutely.

[DEFENSE COUNSEL]: And so that would take out the jury process, which would seat 12 people in the jury box to our right, hear that process of voir dire and selecting

³ Maryland Rule 4-246, Waiver of Jury Trial – Circuit Court, was derived to further protect a criminal defendant’s constitutional right to a jury trial. However, Mr. Moore does not claim a violation of Rule 4-246, and as such we will not analyze this matter under that rule.

jurors from the Baltimore County motor/voter polls and foregone for a bench trial. Meaning, that the judge would sit in both fact and law and make a decision on this matter. Is that the decision you would like to make?

[MR. MOORE]: That is my decision.

The right to a jury trial is guaranteed by the Sixth Amendment to the United States Constitution and by Articles 5, 21, and 24 of the Maryland Declaration of Rights.

Abeokuto v. State, 391 Md. 289, 316 (2006) (footnote omitted). Further, the Articles of the Maryland Declaration of Rights are analyzed in sync with their federal counterparts.

See Clark v. State, 485 Md. 674, 717–18 (2023) (reading together a defendant’s rights under the Sixth Amendment and Articles 21 and 24 of the Maryland Declaration of Rights); *Epps v. State*, 52 Md. App. 308, 311 (1982) (noting that a criminal defendant’s right to a jury trial is guaranteed by the Sixth Amendment, made applicable to the State through the Fourteenth Amendment, and by Articles 5, 21, and 24 of the Maryland Declaration of Rights).

When dealing with the waiver of a constitutional right, “courts indulge every reasonable presumption against waiver of fundamental constitutional rights and . . . do not presume acquiescence in the loss of fundamental rights.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (cleaned up). Therefore, “[a] waiver of a constitutional right must appear affirmatively in the record[.]” *Biddle v. State*, 40 Md. App. 399, 407 (1978) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)).

Moreover, “a constitutionally valid waiver of the right to a jury trial must be knowing and voluntary; it must be an intentional relinquishment or abandonment of a

known right or privilege.” *Hammond v. State*, 257 Md. App. 776, 788 (2023) (cleaned up). “Although the examiner may be the court, the prosecutor, and/or the defense counsel, 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 (cleaned up).

While “there is no fixed incantation required, [] the court must satisfy itself that the defendant has *some knowledge* of the jury trial right before being allowed to waive it.” *Hammond*, 257 Md. App. at 121 (cleaned up) (emphasis added). *Accord Boulden v. State*, 414 Md. 284, 295 (2010) (“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.”). In determining whether the defendant’s waiver was made knowingly, we look to the totality of the circumstances.” *Hammond*, 257 Md. App. at 122.

Given the totality of the circumstances here, we conclude that Mr. Moore had “some knowledge” of his jury trial right and that his waiver of that right was made knowingly. First, Mr. Moore was informed on the record of some of the important differences between a jury and bench trial, namely that a jury would consist of twelve people selected by *voir dire* from Baltimore County, and that in a bench trial “the judge would sit in both fact and law and make a decision on this matter.” To be sure, Mr.

Moore was not informed of each and every right and procedure that come along with a jury trial. However, given that no fixed incantation is required, the colloquy was sufficient to demonstrate that Mr. Moore was acquainted with how a jury trial differed from a bench trial and what he was giving up by waiving his right to a jury trial.

Further, Mr. Moore was represented by an attorney, who indicated that he had counseled Mr. Moore regarding the decision to waive the right to a jury: “it’s our position, from our conversations and speaking directly with [Mr. Moore], [he] would like this matter to be set in before a bench trial.” “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.” *Hammond*, 257 Md. App. at 123. We hold that the information provided to Mr. Moore on the record, in combination with his being represented by counsel and the information he apparently received from counsel, was sufficient to provide him with “some knowledge” of his right to a jury trial as is necessary to create a knowing waiver.

In an attempt to overcome this conclusion, Mr. Moore contends that the court was required to make him aware of the fact that a jury’s decision must be unanimous, and that a jury would be required to find him guilty beyond a reasonable doubt. These arguments fail. In *State v. Bell*, our Supreme Court held that a specific discussion of the unanimity requirement was not required for a knowing waiver of the right to a jury trial where the defendant had been provided with sufficient other information. 351 Md. 709, 730 (1998).

Further, in *Robinson v. State*, this Court upheld a jury trial waiver where defense counsel had failed to advise the defendant of the beyond a reasonable doubt standard of proof, holding that an explanation of the standard of proof in a jury trial was not a mandatory requirement for a knowing waiver. 67 Md. App. 445, 456 (1986). Therefore, even if Mr. Moore was not advised on the record of the unanimity requirement or the standard of proof, those gaps do not mean that his jury trial waiver was unknowing.

II. Cross-Examination Regarding Mr. Moore’s Pre-Arrest Silence

Mr. Moore next contends that the court erred in allowing the State to question him regarding his pre-arrest exercise of the right to remain silent, in violation of Maryland Rules 5-401 and 5-403, Article 22 of the Maryland Declaration of Rights, and the Fifth and Fourteenth Amendments of the U.S. Constitution. The State argues that, because Mr. Moore’s counsel failed to object on this basis at trial, the issue is unpreserved for our review. Mr. Moore, in response, urges us to engage in plain error review to reach the merits of the issue, nonetheless.

We agree with the State that this issue is not preserved for our review. “Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Rule 8-131(a). Here, there is no dispute that Mr. Moore’s counsel did not object at trial to the relevant line of questioning regarding his interactions with the detective prior to his arrest—providing no opportunity for a ruling in the trial court.

Further, we decline to engage in plain error review to reach the merits of this question. We do “possess plenary discretion to notice plain error material to the rights of a defendant, even if the matter was not raised in the trial court.” *Danna v. State*, 91 Md. App. 443, 450 (1992). However, we “exercise [our] discretion to recognize plain error only when it is compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.” *Steward v. State*, 218 Md. App. 550, 566 (2014) (cleaned up). We look to a series of factors to determine whether plain error review is warranted. These are “(1) there must be error (that the defendant did not affirmatively waive); (2) the error must be ‘clear and obvious,’ i.e., not subject to reasonable dispute; and (3) the error must be material, meaning that it affected the outcome of the trial.” *Id.*

However, we need not consider these factors in deciding not to engage in plain error review, as “the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation.” *Morris v. State*, 153 Md. App. 480, 507 (2003) (footnote omitted). Moreover, Mr. Moore provides no specific argument on these factors for us to consider. Therefore, we decline to engage in plain error review to reach the merits of this issue.

III. Merging of Convictions

Mr. Moore argues that the trial court should have merged his convictions for third-degree sex offense and second-degree assault with his conviction for sexual abuse of a minor, because “the ‘sex abuse’ element of the charge of sexual abuse of a minor was satisfied with proof of the third-degree sex offense and second-degree assault charges.”

Mr. Moore argues that the failure to merge his convictions violated his rights against double jeopardy because he was convicted several times for the same crime and conduct.

“The Fifth Amendment to the United States Constitution forbids any person from being ‘twice put in jeopardy of life or limb.’” *Odum v. State*, 412 Md. 593, 603 (2010) (quoting U.S. Const. amend. V). The Fifth Amendment prohibition “against making a defendant twice accountable for the same offense” is applicable to the states through the Fourteenth Amendment. *State v. Long*, 405 Md. 527, 535–36 (2008) (citing *Benton v. Maryland*, 395 U.S. 784, 794 (1969)). Double jeopardy “bars multiple punishments and trials for the same offense.” *Id.* at 536 (citing *United States v. Wilson*, 420 U.S. 332, 343 (1975)).

“When one is charged with different offenses arising out of the same transaction, the test for determining whether they are the ‘same offense’ for double jeopardy purposes is the ‘required evidence’ test, which is often called the ‘*Blockburger* test.’” *Warne v. State*, 166 Md. App. 135, 140–41 (2005). “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is *whether each provision requires proof of an additional fact which the other does not.*” *Id.* (citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

With regards to how double jeopardy principles and *Blockburger* apply to multiple convictions arising out of the sexual abuse of a minor, this court tackled a similar issue in *Rutherford v. State*, 160 Md. App. 311, 327–330 (2004). There, the appellant, Mr.

Rutherford, was convicted of second-degree rape, second-degree sex offense, two counts of third-degree sex offense, and child abuse. *Rutherford*, 160 Md. App. at 327. The court imposed concurrent sentences for rape and the other sexual offenses, and a separate, consecutive sentence for child abuse. *Id.* Mr. Rutherford argued that because the rape and sexual offenses made up the bases of the child abuse conviction, the court should have merged all the offenses into the child abuse conviction. *Id.*

The *Rutherford* Court found no error in the imposition of consecutive sentences because the legislature intended to allow as much for the offenses at issue. 160 Md. App. at 330. Relying upon the United States Supreme Court’s decisions in *Albernaz v. United States*, 450 U.S. 333 (1981), and *Missouri v. Hunter*, 459 U.S. 359 (1983), the *Rutherford* Court stated:

The Court made plain in *Albernaz* that the test announced in *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932), for determining whether separate sanctions may be imposed for multiple offenses arising out of a single transaction “is a ‘rule of statutory construction,’ and because it serves as a means of discerning congressional purpose the rule should not be controlling where, for example, there is a clear indication of contrary legislative intent.” 450 U.S. at 340, 101 S. Ct. 1137.

Id. at 329. Further, the court reiterated the holding from *Hunter*, stating that

[t]he *Hunter* Court repeated the notion that “simply because two criminal statutes may be construed to proscribe the same conduct under the *Blockburger* test does not mean that the Double Jeopardy Clause precludes the imposition, in a single trial, of cumulative punishments pursuant to those statutes.” 459 U.S. at 368–69, 103 S. Ct. 673. The Court went on to say that “where, as here, a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the ‘same’ conduct under *Blockburger*, a court’s task of statutory construction is at an end and the trial court may impose cumulative punishment under such statutes in a single trial.”

Id. at 330 (cleaned up) (emphasis added).

In *Rutherford*, the court held that the statute under which Mr. Rutherford was charged expressly authorized separate punishments for child abuse and the underlying sexual offenses. 160 Md. App. at 330. The court relied on the statute’s provision that “[t]he sentence imposed under this section may be imposed separate from and consecutive to or concurrent with a sentence for any offense based upon the act or acts establishing the abuse,” and concluded that “the General Assembly has expressly authorized multiple punishments for child abuse and any underlying sexual offenses.” *Id.* at 328. Accordingly, “there is . . . no double jeopardy bar to the sentences imposed in this case.” *Id.* at 330.

The same logic applies here. Mr. Moore was charged with sexual abuse of a minor under Section 3-602⁴ of the Maryland Criminal Law Article (“CR”), which provides:

A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for:

- (1) any crime based on the act establishing the violation of this section; or
- (2) a violation of § 3-601 of this subtitle involving an act of abuse separate from sexual abuse under this section.

CR § 3-602(d). Therefore, whether Mr. Moore’s convictions for sexual abuse of a minor

⁴ *Rutherford* differs slightly from this case in that Mr. Rutherford was charged with child abuse rather than sexual abuse of a minor. However, the statute under which Mr. Rutherford was charged contains the same relevant language from Section 3-602(d), that “[a] sentence imposed under the section may be separate from and consecutive to or concurrent with a sentence for . . . any crime based on the act establishing the violation of this section[.]” See CR § 3-602(d) (emphasis added). Therefore, the reasoning from *Rutherford* is equally applicable here.

should be deemed the “same” as his convictions for sexual offenses and assault is of no consequence here, as Section 3-602(d) authorizes separate convictions and punishments for the same underlying conduct. Therefore, our statutory construction task is “at an end.” *See Rutherford*, 160 Md. App. at 330 (quoting *Hunter*, 459 U.S. at 368–69). The sentences ordered by the circuit court did not violate Mr. Moore’s rights against double jeopardy.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**