

Circuit Court for Baltimore County
Case No.: C-03-CR-24-000749

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2480

September Term, 2024

BRANDON M. NAIMASTER

v.

STATE OF MARYLAND

Graeff,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 4, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Following a bench trial in the Circuit Court for Baltimore County, appellant Brandon M. Naimaster was convicted of sex abuse of a minor, second-degree rape, and related offenses. Just before trial, defense counsel conducted a jury-trial-waiver colloquy with Naimaster. Among other things, counsel advised Naimaster that if he elected a jury trial, the jury would “decide [his] guilt or innocence beyond a reasonable doubt to a moral certainty by a unanimous decision.” Neither the court nor counsel for either party clarified the State’s burden of proof—and Naimaster’s lack thereof—before Naimaster waived his right to a jury trial. On appeal, Naimaster argues that the court erred in failing to ensure that his waiver was knowing because it did not correct the advisement before accepting his waiver. The State agrees. So do we.

The right to a jury trial is protected by both the United States Constitution and the Maryland Declaration of Rights. *Hammond v. State*, 257 Md. App. 99, 117 (2023). A defendant may waive their right to a jury trial, in favor of a bench trial, but only if the trial court is “satisfied that there has been an intentional relinquishment or abandonment of a known right or privilege.” *Walker v. State*, 406 Md. 369, 378 (2008) (cleaned up). In other words, the waiver must be knowing and voluntary, and the trial court “is charged with ensuring that the record demonstrates” a valid waiver. *Winters v. State*, 434 Md. 527, 537 (2013) (cleaned up).

Whether a waiver is valid “depends upon the facts and circumstances of each case.” *State v. Hall*, 321 Md. 178, 182 (1990). In reviewing whether the record reflects a knowing waiver, we “[c]onsider[] the totality of the circumstances[.]” *Hammond*, 257 Md. App. at 122. A waiver colloquy need not include any “fixed incantation[.]” but the trial court “must

satisfy itself that the defendant has some knowledge of the jury trial right before being allowed to waive it.” *Id.* at 121 (cleaned up).

Incorrect or misleading statements during a waiver colloquy may invalidate a jury-trial waiver. For example, in *Winters*, the trial court advised the defendant, “[F]or such a jury to convict you or 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[.]” 434 Md. at 538. The Supreme Court of Maryland concluded that this advisement “incorrectly indicated to Winters that when proving that he was not criminally responsible, he would have to do so beyond a reasonable double.” *Id.* The Court reasoned that the misstatement “may have misled Winters to believe that” a jury trial was less attractive “than it actually is under Maryland law[.]” and, “thereby, influenced his decision to waive his right to a jury trial.” *Id.* at 538–39. There was no indication “that the trial judge, defense counsel, or anyone else corrected the misleading advice.” *Id.* at 539. Thus, the Court determined, the trial court “failed to ensure” a knowing waiver, requiring reversal. *Id.* at 539–40. So too here.

Naimaster was advised that the jury would decide his “guilt *or innocence* beyond a reasonable doubt[.]” (Emphasis added.) At best, this was misleading as to both the standard of proof and which party bore the burden of proof. The misstatement may have made a jury trial seem less attractive because it implied that Naimaster would bear some burden to prove his innocence to the jury. It makes no difference that, unlike Winters, Naimaster was advised by his attorney rather than the trial court. The Supreme Court has made clear that,

“[a]lthough 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 v. State*, 391 Md. 289, 317 (2006) (cleaned up). *See also Winters*, 434 Md. at 537. As in *Winters*, there is no indication in the record that anyone corrected the misleading advice before Naimaster waived his right to a jury trial. *Winters*, 434 Md. at 539. Thus, the trial court failed to ensure that Naimaster’s waiver was knowing. *See id.* at 540 n.4. We must therefore reverse his convictions.^{1, 2}

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY REVERSED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO
BE PAID BY BALTIMORE
COUNTY.**

¹ Naimaster does not challenge the evidentiary sufficiency of his convictions. Thus, on remand, the State may, in its discretion, elect to retry him.

² Also pending before the Court is Naimaster’s “Motion for Summary Reversal and to Expedite Issuance of the Mandate.” Given our holding here, we shall deny as moot the request for summary reversal but grant the request to expedite the mandate. Upon entry of this Opinion, the Clerk shall issue the mandate forthwith.