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State v. Bell:**A Defendant's Knowing and Voluntary Waiver of a Jury Trial Does Not Require Specific In-Court Advice to Defendant with Respect to the Unanimity Requirement**

By Cheryl F. Matricciani

The Court of Appeals of Maryland held that a defendant may knowingly and voluntarily waive the right to a jury trial without specific reference to the unanimity requirement during in-court advice given to a defendant regarding whether to elect a court or jury trial. *State v. Bell*, 351 Md. 709, 720 A.2d 311 (1998). The court's ruling clarified the knowing and voluntary standard that a trial court must apply when accepting a defendant's waiver of a jury trial under revised Maryland Rule 4-246(b).

Wilbur Bell ("Bell") appeared before Judge Michele D. Hotten ("Judge Hotten") in the Circuit Court for Prince George's County on charges of second degree rape, assault and battery, attempted rape, and assault with intent to rape. *Id.* at 711, 720 A.2d at 312. At the start of trial, Bell informed the court of his intent to waive a jury trial. *Id.* at 712, 720 A.2d at 313. Bell was questioned by both his attorney and Judge Hotten about his decision and Bell was advised that the State must prove the charges beyond a reasonable doubt, before either a twelve-person jury, or a member of the bench. *Id.* at 714, 720 A.2d at 313. Bell acknowledged that his decision to waive a jury trial was made freely and voluntarily. *Id.* The court accepted Bell's waiver and Bell was

subsequently convicted on all counts. *Id.* at 712-13, 720 A.2d at 312.

The Court of Special Appeals of Maryland reversed the decision, holding that the circuit court had failed to sufficiently advise Bell of his right to a jury trial because Bell was not instructed on the unanimity requirement setting forth that all twelve jurors must agree to render a guilty verdict. *Id.* at 712, 720 A.2d at 312. The Court of Appeals of Maryland granted certiorari on the State's petition to consider whether Maryland Rule 4-246(b) requires an examination of the defendant regarding jury unanimity. *Id.* at 713, 720 A.2d at 313.

The court of appeals addressed the requirement that a defendant knowingly and voluntarily waive the right to a jury trial by reviewing an earlier decision where the court considered the requirement that a defendant have "full knowledge" of the right to a jury trial as specified by former Maryland Rule 735(d). *Id.* at 714, 720 A.2d at 314. In *Countess v. State*, 286 Md. 444, 408 A.2d 1302 (1979), the court held that the term full knowledge, includes, among other factors, the defendant's understanding "that in a jury trial all 12 jurors must agree that he is so guilty but in a court trial the judge may so find." *Id.* at 715, 720 A.2d at 314 (quoting *Countess*, 286 Md. at 455,

408 A.2d at 1307-08).

The court emphasized that its decision in *Countess* was made before the January 1, 1982, modification of Rule 735 which deleted the full knowledge requirement. *Id.* at 716, 720 A.2d at 314. The court noted that in the current form of Maryland Rule 4-246, the full knowledge requirement has been replaced so that "a trial court may now accept a waiver if it is satisfied that the waiver is made 'knowingly and voluntarily.'" *Id.* at 716-17, 720 A.2d at 315.

The court then examined the knowing and voluntary standard in absence of the full knowledge requirement. *Id.* at 717, 720 A.2d at 315. Specifically, the court addressed whether explicit reference to the unanimity requirement during in-court advice is necessary for the defendant to knowingly waive the right to a jury trial. *Id.* The court analyzed the modification to former Rule 735(d) in accordance with the canons of statutory construction, which required the court to "ascertain and effectuate the intention of the legislature." *Id.* (quoting *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995)). In so doing, the court first looked to the actual language of the statute, and then to the purpose of the legislation to determine "what different standard,

if any, was created when the rule was modified.” *Id.*

In analyzing the plain meaning of former Rule 735(d), the court reviewed the definition of the words “full” and “knowingly.” *Id.* at 719-20, 720 A.2d at 316. Determining that full means complete and entire, and knowingly means conscious or intelligent, the court concluded that full knowledge under *Countess*, compelled the court to completely explain all aspects of a defendant’s right to a jury trial, including, the jury’s function at trial and the defendant’s right to be tried by a jury. *Id.* at 720, 720 A.2d at 316. (quoting THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 573, 672 (unabr. ed. 1983); BLACK’S LAW DICTIONARY 672, 872 (6th ed. 1990)). The court further noted that in contrast to the full knowledge requirement, a knowing and voluntary waiver under current Rule 4-246 requires a defendant to do the following: (1) recognize that the defendant is surrendering the right to a jury trial, (2) possess a general understanding of the nature of a jury trial; and (3) voluntarily waive that right. *Id.*

The court next explored the legislative intent and found that at the time of *Countess*, the Rules Committee proposed an entire redraft of Rule 735. *Id.* at 723, 720 Md. At 318. Specifically, the Rules Committee recommended that a court could not accept a defendant’s waiver of the jury trial right until the court was satisfied that the defendant understood: (1) the right to be tried by a jury of twelve persons or by a judge without a jury, and (2) that a

finding of guilt in a jury trial required that all twelve jurors agreed to the defendant’s guilt. *Id.* (citing Seventy-Fifth Report of the Standing Committee on Rules of Practice and Procedure, 2-3 & app. (Oct. 26, 1981)). The court noted that both proposals were rejected, with the motion to remove the unanimity language passing by a vote of 5-2. *Id.* at 724, 720 A.2d at 318 (citing Rules Order, 8 Md. Reg. 1928-30 (1981); Minutes of Meeting of Court of Appeals, 3 (Nov. 6, 1981)). The court emphasized that the rejection of the Committee’s proposals “implies that we wished to move away from the rigidity of the former rule 735 and *Countess*.” *Id.* The court concluded, therefore, that under Rule 4-246, the judge must be certain only that the defendant knowingly and voluntarily waived the right to a jury trial. *Id.*

In determining whether a waiver of the jury trial right is knowing and voluntary, the court adopted a facts and circumstances analysis as applied in two earlier court of appeals opinions. *Id.* at 724-25, 700 A.2d at 319. In *Hall v. State*, 321 Md. 178, 183, 582 A.2d 507, 510 (1990), the court upheld a conviction finding that the defendant possessed the essential knowledge of the right to a jury trial even though the trial court had failed to provide the defendant with details about this right, including the jury selection process. *Id.* In *Tibbs v. State*, 323 Md. 28, 31-32, 590 A.2d 550, 551 (1991), the trial court questioned the defendant to decide if he understood what a jury trial was and determined that he waived the right freely and voluntarily.

Id. at 725-26, 720 A.2d at 319. The defendant’s affirmative response, the court concluded, did not amount to the required comprehension of the jury trial right required by the rule. *Id.*

Applying a facts and circumstances analysis to the instant case, the court reasoned that although the trial court did not advise Bell of the unanimity requirement, Bell was instructed on the fundamentals of a jury trial. *Id.* at 726-27, 720 A.2d 320. In particular, the court found that the trial court cautioned Bell that a jury consists of twelve people, and that a jury or judge would have to find Bell guilty beyond a reasonable doubt. *Id.* at 727, 720 A.2d at 320. The court, therefore, held that under the circumstances, Bell’s discussion with defense counsel and the trial court provided Bell with adequate information about his right to a jury trial such that he possessed the requisite knowledge to knowingly waive his right to a jury trial. *Id.* at 730, 720 A.2d at 321. The court did, however, recognize that this issue should be revisited, and referred the question of whether a defendant should be expressly advised of the unanimity requirement to the Rules Committee for consideration and recommendation. *Id.*

In *Bell v. State*, the court held that advice given to a defendant with respect to the unanimity requirement is no longer necessary for a trial court to accept a defendant’s waiver of the right to a jury trial. When deciding to waive the constitutional right to a jury trial, it is paramount that a defendant understands the purpose and function of the jury. Such understanding

encompasses the fact that a jury of twelve peers must unanimously decide the defendant's fate. Without this pivotal piece of information a defendant may opt for a bench trial based on a mistaken belief that it takes only one person on the jury to find the defendant guilty, and, therefore, the probability of being found guilty is the same if either a judge or a jury hears the evidence. This decision by the court of appeals provides room for this mistaken belief. By providing an explanation of the unanimity requirement, the court ensures that a defendant does not unintentionally relinquish the constitutional right to a jury trial.