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Recent Developments: Powell v. State: When the Trial Court Record Sufficiently Demonstrates That a Criminal Defendant Knowingly and Voluntarily Waived His Right to a Jury Trial, the Trial Judge Does Not Need to State on the Record That the Defendant's Waiver Is Valid

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RECENT DEVELOPMENT

POWELL V. STATE: WHEN THE TRIAL COURT RECORD SUFFICIENTLY DEMONSTRATES THAT A CRIMINAL DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO A JURY TRIAL, THE TRIAL JUDGE DOES NOT NEED TO STATE ON THE RECORD THAT THE DEFENDANT'S WAIVER IS VALID.

By: Christopher Heagy

The Court of Appeals of Maryland held that when the court record demonstrates the trial court implicitly determined that a criminal defendant knowingly and voluntarily waived his right to a jury trial, the trial judge need not state on the record that the defendant knowingly and voluntarily waived his right to a jury trial. *Powell v. Maryland*, 394 Md. 632, 907 A.2d 242 (2006). In a consolidated opinion, the Court held that Maryland Rule 4-246(b) does not compel a trial judge to explicitly state that a defendant's waiver of his right to a jury trial was knowingly and voluntarily given. *Powell*, 394 Md. at 643, 907 A.2d at 249.

On June 21, 2004, after a bench trial in the Circuit Court for Baltimore County, Tavony Wayne Zylanz ("Zylanz") was convicted of fourth degree burglary, felony theft, resisting arrest and several related offenses. Before Zylanz's bench trial began, his attorney told him, in open court, that he could proceed with an agreed statement of facts, have a jury trial, or have a bench trial. Zylanz asked questions throughout this dialogue and received further explanations from his attorney. Zylanz stated he understood his options and decided to have a jury trial; however, prior to empanelling the jury, Zylanz told his attorney he would like a bench trial. Defense counsel again stated Zylanz's options on the record, after which, Zylanz agreed to have a bench trial.

On December 4, 2003, after a bench trial in the Circuit Court for Baltimore City, Steven Anthony Powell ("Powell"), was convicted of second-degree murder. Before his trial began, Powell's attorney stated that Powell had decided to waive his right to a jury trial and sought to place Powell's waiver on the court record. On the court record,

Powell's attorney explained Powell's options and asked Powell if he understood those options. When asked if he wanted a bench or jury trial, Powell chose a bench trial.

In separate opinions, the Court of Special Appeals of Maryland affirmed both Zylanz's and Powell's convictions holding that both Zylanz and Powell knowingly and voluntarily waived their right to a jury trial in conformity with Maryland Rule 4-246(b). The Court of Appeals of Maryland granted Zylanz's petition for writ of certiorari to determine whether he had validly waived his right to a jury trial absent an explicit finding on the record that his waiver was knowingly and voluntarily given. The Court granted Powell's petition for writ of certiorari to consider the same issue and to consider whether Powell's waiver was valid when there was no specific inquiry into the voluntariness of his waiver. Although the petitions for writs of certiorari were granted and the cases were argued separately before the Court, because of the common central issue, both cases were consolidated into one opinion.

The Court of Appeals of Maryland began its analysis by stating that although both the United States and Maryland Constitutions protect a defendant's right to a jury trial, a criminal defendant may waive that right. *Powell*, 394 Md. at 638, 907 A.2d at 246. Maryland Rule 4-246(b) states a criminal defendant may waive his right to a jury trial before his trial begins, as long as the trial court determines, after the defendant is examined on the record, that his waiver was knowingly and voluntarily given. *Powell*, 394 Md. at 638-39, 907 A.2d at 246.

To waive a constitutionally protected right, "the trial judge must be satisfied that there has been an intentional relinquishment, or abandonment of a known right or privilege." *Id.* at 639, 907 A.2d at 246-47 (quoting *Smith v. State*, 375 Md. 365, 379, 825 A.2d 1055, 1064 (2003)). Waiver depends on the facts and circumstances of each case and the trial court must be satisfied 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 waiving that right. *Powell*, 394 Md. at 639, 907 A.2d at 247 (quoting *State v. Hall*, 321 Md. 178, 182, 582 A.2d 507, 509 (1990)).

The Court then examined the requirements of Maryland Rule 4-246(b) to determine whether the trial court must place its conclusion that the defendant knowingly and voluntarily waived his right to a jury trial on the record. *Powell*, 394 Md. at 640, 907 A.2d at 247. Looking at the plain language of Maryland Rule 4-246(b), the Court decided

that while an examination of the defendant must be conducted on the record, the language of the Rule does not require that the trial judge explicitly state that the defendant knowingly and voluntarily waived his right to a jury trial. *Powell*, 394 Md. at 641, 907 A.2d at 247.

In Zylanz's case, based on the totality of the circumstances, including Zylanz's conversation with his attorney and his responses to the trial judge's questions, the trial judge implicitly determined that Zylanz's waiver of his right to a jury trial was knowingly and voluntarily given. *Id.* at 643, 907 A.2d at 248-49. There is a presumption that a trial judge knows and properly applies the law. *Id.* at 643, 907 A.2d at 249. As such, the trial judge is not required to make an explicit finding that the waiver of a jury trial is knowingly and voluntarily made. *Id.* When the record reflects that the trial court implicitly determined that the elements of a knowing and voluntary waiver were present, Maryland Rule 4-246(b) is not violated and the waiver is valid. *Powell*, 394 Md. at 643, 907 A.2d at 249. In the instant case, the court record sufficiently demonstrated that Zylanz knowingly and voluntarily waived his right to a jury trial. *Id.* Similarly, based on the conversation between Powell and his attorney on the record, the trial judge implicitly determined that Powell knowingly and voluntarily waived his right to a jury trial. *Id.* at 644-48, 907 A.2d at 249-50.

Finally, Powell argued further that Maryland Rule 4-246(b) was violated when there was no specific inquiry into the voluntariness of his jury trial waiver. *Powell*, 394 Md. at 645, 907 A.2d at 250. Trial judges are not required, however, to engage in a "specific ritual to assess the voluntariness of a defendant's jury trial waiver." *Id.* Absent a factual trigger, which sparks an inquiry into the voluntariness of the defendant's jury trial waiver, the trial judge need not explicitly ask a defendant whether his waiver was coerced. *Id.* (citing *Kang v. State*, 393 Md. 97, 899 A.2d 843 (2006)). In this case, Powell's responses to his attorney's questions on the record did not require the trial judge to inquire further as to voluntariness of the waiver. *Powell*, 394 Md. at 645, 907 A.2d at 250.

Judge Greene's dissent argues that the majority's interpretation of Maryland Rule 4-246(b) is inconsistent with the Court's interpretation of similarly written rules and that the majority incorrectly interprets the rule because the plain meaning of "determine" requires the trial judge to state on the record that the defendant's waiver was knowingly and voluntarily given. *Powell*, 394 Md. at 648-52, 907 A.2d at 251-55

(Greene, J. dissenting). Further, a clear statement by the trial judge on the record regarding the defendant's waiver of his right to a jury trial would remove any reasonable doubt about the trial judge's finding and does not impose a significant burden on the trial court. *Id.* at 652, 907 A.2d at 254 (Greene, J. dissenting).

In *Powell v. State*, the Court of Appeals of Maryland held that a trial court can implicitly determine that a criminal defendant has knowingly and voluntarily waived his right to a jury trial. Although this decision appears to comply with Maryland Rule 4-246(b), the Court seems to ignore the presumption against the waiver of fundamental constitutional rights. The waiver of a fundamental constitutional right should require an explicit finding by the trial judge that such a right was knowingly and voluntarily waived. A more in-depth inquiry into the defendant's waiver of this right would protect the defendant without imposing a significant burden on the trial court.