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Katrine Bakhtiary

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RECENT DEVELOPMENT

WALKER V. STATE: A SHOWING ON THE RECORD THAT, UNDER THE TOTALITY OF THE CIRCUMSTANCES, THE DEFENDANT HAD KNOWLEDGE OF THE JURY TRIAL RIGHT SATISFIES THE REQUIREMENT OF A KNOWING WAIVER OF THE RIGHT TO A JURY TRIAL.

By: Katrine Bakhtiary

The Court of Appeals of Maryland held that the requirement of a knowing waiver of the right to a jury trial, pursuant to Maryland Rule 4-246(b), is satisfied when the record shows that, under the totality of the circumstances, the defendant had some knowledge of the jury trial right. *Walker v. State*, 406 Md. 369, 958 A.2d 915 (2008). More specifically, a knowing waiver is made when the record shows that the trial judge specifically knew the defendant had a previous jury trial experience, and, in such a case, the defendant is imputed to know the burden of proof in a criminal trial and that the jury trial would consist of a twelve-member jury. *Id.* at 385, 958 A.2d at 924.

On July 24, 2005, Kevin Walker (“Walker”) was arrested and charged with numerous violations, including possession of a forged document. Several weeks before trial, the district court received a demand for a jury trial from Walker’s counsel. Walker’s trial was scheduled in the Circuit Court for Howard County. On the day of Walker’s trial, the state informed the court, on the record, and Walker’s counsel agreed, that the parties were proceeding on a not guilty agreed statement of facts concerning the charge of possession of a forged document. A dialogue between Walker, his attorney, and the court took place, qualifying Walker on the record as to the not guilty agreed statement of facts.

During the colloquy, Walker’s attorney asked Walker if he understood the meaning of proceeding on a not guilty statement of facts and that proceeding in such a manner meant Walker was giving up his right to a jury trial. Walker acknowledged that he understood. The court then asked Walker if he understood he was waiving his right to a jury trial. Walker replied he did not know this at first but that he became aware that he was waiving his right to a jury trial. The court

then acknowledged that Walker had been before the same court and the same judge in a jury trial, and therefore, Walker fully understood jury trials. Walker agreed to the final statement by the court informing him that he was waiving his right to a jury trial in proceeding on a not guilty agreed statement of facts.

The Circuit Court for Howard County found that Walker made a “knowing, intelligent and voluntary decision” and waived his right to trial by jury. Walker appealed to the Court of Special Appeals of Maryland on the basis that the circuit court erred in not determining, on the record, whether Walker’s waiver of a jury trial was made knowingly, pursuant to Maryland Rule 4-246(b). The Court of Special Appeals of Maryland affirmed the lower court’s decision. The Court of Appeals of Maryland granted Walker’s petition for a writ of certiorari.

The requirement of Maryland Rule 4-246(b), that the waiver of a jury trial be made “knowingly,” came from a revision to Rule 735, which required the defendant to have “full knowledge of his right to a jury trial.” *Walker*, 406 Md. at 378, 958 A.2d at 920 (citing *Abeokuto v. State*, 391 Md. 289, 317-18, 893 A.2d 1018, 1034 (2006)). The revision indicated a desire to abandon a rigid requirement of the trial judge advising the defendant of the right to a jury trial through a litany of questions and instructions. *Walker*, 406 Md. at 379, 958 A.2d at 920 (citing *State v. Bell*, 351 Md. 709, 724, 720 A.2d 311, 318 (1998)). The court noted that the change in the rule mitigated the knowledge requirement for a valid waiver such that the defendant’s knowledge did not need to be “complete or entire.” *Walker*, 406 Md. at 379, 958 A.2d at 920-21 (quoting *Bell*, 351 Md. at 730, 720 A.2d at 321). The court further explained that the right to a jury trial is waived when there has been an “intentional relinquishment or abandonment of a known right or privilege.” *Walker*, 406 Md. at 378, 958 A.2d at 920 (quoting *Powell v. State*, 394 Md. 632, 639, 907 A.2d 242, 247 (2006)).

The Court of Appeals of Maryland discussed prior decisions which addressed the application of the “knowing” requirement. *Walker*, 406 Md. at 379-81, 958 A.2d at 920-22. For example, a knowing waiver was made where the defendant was told the number of jurors in the jury and the standard of proof, despite the fact that the defendant was not informed that the verdict had to be unanimous among the jurors. *Id.* at 379, 958 A.2d at 921 (citing *Bell*, 351 Md. at 730, 720 A.2d at 321). Similarly, when a defendant was not told the details of the process of selecting the jury, the court still found the waiver to be

knowingly made. *Walker*, 406 Md. at 380, 958 A.2d at 921 (citing *State v. Hall*, 321 Md. 178, 183, 582 A.2d 507, 510 (1990)). A defendant made a knowing waiver of the right to a jury trial by waiving the right after being asked seven times if he understood his rights and the nature of a jury trial, which was explained to him in “byte-size groups.” *Walker*, 406 Md. at 380-81, 958 A.2d at 921-22 (quoting *Abeokuto*, 391 Md. at 320, 893 A.2d at 1036). In examining these cases, the court noted that the determination of whether a waiver of the right to a jury trial was made knowingly depends on the facts and the totality of the circumstances of each case. *Walker*, 406 Md. at 380, 958 A.2d at 921 (citing *Hall*, 321 Md. at 182-83, 582 A.2d at 507).

Walker argued that the facts of his case were more similar to those in a previous decision where the court found the defendant did not knowingly waive his right to a jury trial, and therefore, that case should be controlling here. *Walker*, 406 Md. at 381-82, 958 A.2d at 922 (citing *Tibbs v. State*, 323 Md. 28, 31-32, 590 A.2d 550, 551 (1991)). The court, in *Tibbs*, based its finding on the fact that the defendant did not receive any information concerning the nature of a jury trial, and the mere fact that the defendant had certain “unspecified” experiences with the criminal justice system was not adequate to find a knowing waiver of the right to a trial by jury. *Walker*, 406 Md. at 382, 958 A.2d at 922 (quoting *Tibbs*, 323 Md. at 31-32, 590 A.2d at 551).

The Court of Appeals of Maryland distinguished *Tibbs* from the present case, primarily because Walker’s experiences with the criminal justice system were not “unspecified” since he had a prior jury trial with the same judge that presided over the trial at issue. *Walker*, 406 Md. at 385, 958 A.2d at 924. Additionally, the court found other facts on the record that showed Walker had some knowledge of his right to a jury trial. *Id.* at 382-83, 958 A.2d at 922-23. The court focused on the decision Walker made to demand a jury trial which moved his case from district court to circuit court. *Id.* at 382, 958 A.2d at 922. Also, the court noted Walker’s attorney reached an agreement with the prosecutor, and Walker chose to proceed on a plea of not guilty with an agreed statement of facts. *Id.* at 383, 958 A.2d at 923. Finally, Walker stated on the record in circuit court that he understood that he was waiving his right to a jury trial. *Id.* The court concluded that, considering the totality of the circumstances, the circuit court had an adequate basis to determine that Walker knowingly waived a jury trial. *Id.*

In relying on the totality of the circumstances, the court made clear that the “knowledge” element of a valid waiver of the right to a jury trial need not be explicitly stated on the record. Instead, trial judges may infer knowledge from the defendant’s experiences. In considering this, defense attorneys should be aware that noting a successful appeal based on the validity of a knowing waiver of the right to a jury trial will be a challenge, unless the defendant stated unequivocally on the record that he either did not understand the right or process of a jury trial, or that he was not waiving his right to a jury trial.