

Circuit Court for Harford County
Case No. C-12-CR-23-000425

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1472

September Term, 2023

JAMES L. PORTER, JR.

v.

STATE OF MARYLAND

Berger,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2024

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

Convicted by a jury in the Circuit Court for Harford County of second degree assault, James L. Porter, Jr., appellant, presents for our review three issues, which for clarity we reduce to one and rephrase: whether the court abused its discretion in denying his motion for new trial. For the reasons that follow, we shall affirm the judgment of the circuit court.

On September 25, 2023, Mr. Porter and defense counsel appeared for trial. Mr. Porter subsequently discharged defense counsel and proceeded *pro se*. During trial, the State produced evidence that on March 18, 2023, Mr. Porter assaulted his daughter by slapping the side of her face. Following trial, Mr. Porter retained new defense counsel, who filed a motion for new trial. Defense counsel subsequently filed an amended motion for new trial in which he contended, among other contentions, that the “jury instruction [on self-defense] contained a prejudicial error,” the court “lacked jurisdiction over” Mr. Porter, and Mr. Porter’s “right to due process was violated.” The court denied the motion.

Mr. Porter contends that, for three reasons, the court abused its discretion in denying the motion. Mr. Porter first contends that “because he was not personally served criminal process,” he “did not appear voluntarily,” and hence, the court “lacked juris[di]ction over” him. But, we have stated that “[a]n alleged lack of personal jurisdiction is . . . subject to” Rule 4-252 (requiring a motion alleging a “defect in the institution of the prosecution” to “be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court”), and when a defendant fails to “raise the question in a timely manner, . . . it is waived.” *Lewis v. State*, 229 Md. App. 86, 108 (2016). Here, Mr.

Porter failed to allege lack of personal jurisdiction in a timely manner as required by Rule 4-252. Hence, his contention is waived.

Mr. Porter next contends that he was not served “a copy of the indictment” in violation of Rule 4-212 (governing the issuance, service, and execution of a summons or warrant) and his “constitutional right to due process.” But, the record reflects that on May 9, 2023, the State delivered to defense counsel, among other documents, a copy of the indictment. Also, Mr. Porter confirmed to the court, prior to trial, that he had received “something telling [him] what the charges are against” him. Hence, there is no violation of either Rule 4-212 or Mr. Porter’s right to due process.

Finally, Mr. Porter contends that “the self-defense pattern jury instruction” given by the court at trial “prejudiced [him] because it lowered the State’s burden of proof by erroneously requiring [him] to believe he was in immediate or imminent danger of bodily harm prior to defending himself.” But, at trial, Mr. Porter, having been given time by the court to review the proposed jury instructions, explicitly confirmed that he did not “have any objection to the” instructions. Hence, his contention is waived. We further note that the instruction given by the court is identical to the Maryland Criminal Pattern Jury Instruction on self-defense, specifically MPJI-Cr 5:07, and “it is well-established that a trial court is strongly encouraged to use the pattern jury instructions.” *Johnson v. State*, 223 Md. App. 128, 152 (2015) (citations omitted). Hence, the court did not abuse its discretion in denying the motion for new trial.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**