

No. 01-24-00382-CR

In the
First Court of Appeals
For the
State of Texas

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1st COURT OF APPEALS
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DEBORAH M. YOUNG
Clerk of The Court

—◆—
Cause No. 1748455
In the 184th District Court
Of Harris County, Texas

—◆—
QUINTON JERMAINE WILSON
Appellant
v.
THE STATE OF TEXAS
Appellee

—◆—
APPELLANT'S BRIEF
—◆—

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ORAL ARGUMENT NOT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 38.1(e), Appellee does not request oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.1(a), a complete list of the names of all interested parties is provided below.

Trial Judge:	Hon. Vanessa Velasquez Visiting Judge, 184 th District Court Harris County, Texas
Appellant:	Quinton Jermaine Wilson TDCJ No. 02507612 TDCJ-ID Briscoe Unit 1459 West Highway 85 Dilley, Texas 78017-4601
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TO THE HONORABLE FIRST COURT OF APPEALS:

STATEMENT OF THE CASE

On April 22, 2022, Appellant was charged by indictment with the felony offense of murder. (CR 41). On May 20, 2024, Appellant and trial counsel filed a motion electing to have the judge assess punishment in the event a guilty verdict was returned by the jury. (CR 251). That same day, and without a written or express waiver of jury trial, a bench trial commenced. (2RR 1-199). On May 21, 2024, the trial court found Appellant guilty as charged in the indictment and, after a brief punishment hearing, assessed punishment at confinement in the Texas Department of Criminal Justice—Institutional Division for thirty-five (35) years. (CR 252-54, 3RR 32, 59). The trial court certified Appellant’s right to appeal on May 22, 2024, and Appellant filed timely notice of appeal. (CR 262, 264-65).

ISSUE PRESENTED

Sole Issue: Did Appellant expressly, knowingly and intelligently waive his right to a jury trial?

◆

STATEMENT OF FACTS

On November 21, 2021, Appellant Quinton Wilson (“Appellant”) shot and killed Giovannie Thompson (“Thompson”) during an altercation at a Houston-area apartment complex. (2RR 10-199; 3RR 6-32). Appellant was the former boyfriend of Tajahlyn Bennett (“Bennett”) and father of her two oldest children. (2RR 53-54, 61, 142, 155). Thompson was Bennett’s fiancé and father of her youngest child. (2RR 46, 143).

Witnesses for the State testified that Appellant shot Thompson after a verbal exchange, but none acknowledged seeing or hearing anything regarding Thompson’s words or actions. (2RR 10-199). Witnesses for the defense testified that Appellant had been shot by Thompson approximately one year prior to the murder. (3RR 14-26). During closing arguments, trial counsel did not use the words “self-defense,” but argued that because Appellant had been previously shot by Thompson, he knew that “something was about to go down.” (3RR 27-29). Trial counsel concluded with, “I mean, this is like the Wild West, Your Honor. Sometimes you've just got to draw first. You can't wait for

the other guy to make their move. You just can't do that and expect to survive in the hood.” (3RR 29).

The trial court found Appellant guilty of murder. (3RR 32). During the punishment stage of trial, the State introduced evidence of Appellant’s prior convictions and an allegation of tampering with evidence related to the murder charge. (3RR 33-35, 43-52). No one testified on Appellant’s behalf. (3RR 53).

The trial court, aware that pretrial negotiations stalled with the State’s offer of forty (40) years and Appellant’s offer of ten (10), sentenced Appellant to confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of thirty-five (35) years. (2RR 9-10, 3RR 59).



SUMMARY OF THE ARGUMENT

Sole Point of Error: Appellant did not expressly, knowingly or intelligently waive his right to a jury trial. Accordingly, his murder conviction should be reversed and remanded for a new trial.



APPELLANT’S SOLE POINT OF ERROR

Appellant did not expressly, knowingly or intelligently waive his right to a jury trial.

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” U.S. CONST. amend. VI; *see Duncan v. Louisiana*, 391 U.S. 145, 149 (1968)(applying the Sixth Amendment jury trial guarantee to the states).¹

The Texas Constitution mandates: “[t]he right of trial by jury shall remain inviolate.” *See* TEX. CONST. art. I, sec. 15; TEX. CODE CRIM. PROC. art. 1.12. A defendant has a limited right to waive his constitutional right to a jury trial in favor of a bench trial or pleading guilty. *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942); *Hobbs v. State*, 298 S.W.3d 193, 197 (Tex.Crim.App. 2009); *see* U.S. CONST. amend. VI; TEX. CONST. art. I, sec. 15; TEX. CODE CRIM. PROC. art. 1.12. The right is

¹ The Texas Court of Criminal Appeals has held that the right to a jury trial is a waivable-only right, the violation of which can be raised for the first time on direct appeal notwithstanding the lack of objection at trial. *See Rios v. State*, 665 S.W.3d 467, 477 (Tex.Crim.App. 2022). In *Rios*, the Court further held that the violation of a defendant’s right to a jury trial is structural error and, therefore, not subject to harm analysis. *Id.* at 485-86.

limited because the State must consent to the waiver in writing, and the trial court must accept it:

“The defendant in a criminal prosecution ... shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that, except as provided by Article 27.19, the waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the state. The consent and approval by the court shall be entered of record on the minutes of the court, and the consent and approval of the attorney representing the state shall be in writing, signed by that attorney, and filed in the papers of the cause before the defendant enters the defendant's plea.”

TEX. CODE CRIM. PROC. art. 1.13(a)(emphasis added).

Waiver of a constitutional right requires an “intentional relinquishment or abandonment of the right.” *See Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). A waiver will not be inferred from a silent record. *Id.* “[C]ourts indulge every reasonable presumption against waiver’ of fundamental constitutional rights.” *Id.* (footnote omitted); *see Boykin v. Alabama*, 395 U.S. 238, 243 (1969). “Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady v. United States*, 397 U.S. 742, 748 (1970)(footnote omitted); *see Godinez v. Moran*, 509 U.S. 389, 400-01 (1993)(“The purpose

of the ‘knowing and voluntary’ inquiry ... is to determine whether the defendant actually ... understand[s] the significance and consequences of a particular decision.”). Whether “there is an intelligent, competent, self-protecting waiver of jury trial by an accused must depend upon the unique circumstances of each case.” *Adams*, 317 U.S. at 278.

Without a valid waiver of a defendant’s right to a jury trial (even when a defendant seeks to waive that right), the trial court has no authority to proceed without a jury. *See In re State ex. Rel. Ogg*, 618 S.W.3d 361 (Tex.Crim.App. 2021). The trial court also lacks authority to proceed without a jury if the State does not accept the defendant’s waiver in writing. TEX. CODE CRIM. PROC. art. 1.13(a).

The offense with which the defendant is charged should also be a consideration when considering a jury trial waiver. The United States Supreme Court has said that courts should not accept a jury waiver “as a mere matter of rote but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from [jury trials] or from any of the essential elements thereof, and *with a caution increasing in degree as the offenses dealt with increase in gravity.*” *United States v. Boynes*, 515 F.3d 284, 288-89 (4th Cir. 2008)(emphasis in original)(quoting *Patton*

v. United States, 281 U.S. 276, 312-13 (1930)). Here, Appellant was charged with the first-degree felony offense of murder and was asserting a claim of self-defense. Absent a capital crime, the stakes could not have been higher.

No written waiver of jury trial was executed in Appellant's case. On the day of trial, the judge made the first and only reference to Appellant pleading "not guilty" and having a court trial:

THE COURT: Let the record reflect that where we left off on Thursday, which was May the 16th -- it was a Thursday -- we were across the street at the Criminal Justice Center in the ceremonial courtroom. The defendant was set for a jury trial. The defendant chose to plead not guilty to the Court and to proceed with a court trial. Are both sides ready to proceed? State?

MS. LE: Yes, Your Honor, State is ready.

THE COURT: Mr. Graves?

MR. GRAVES: Yes, Your Honor.

(2RR 9). No further information is available about the conversation that allegedly took place among the parties four days prior, nor were any

additional inquiries made into Appellant’s desire to waive his right to a jury trial and proceed to a bench trial.²

An entry on the trial court’s docket sheet shows the following:

5/16/2024	DAY 1 Defendant WILSON, QUINTON JERMAINE appeared in person with Counsel GRAVES, R JAMES TUCKER. Interpreter N/A HELEN LE & DANA NAZAROVA appeared for the State. Court Reporter: CARLA DAVIS Judge Presiding: VANESSA VELASQUEZ AT 10:12AM COURT CAME TO ORDER. AT 10:13AM DEFENSE COUNTER OFFERED WITH 15YEARS, OR A COURT TRIAL. STATE AGGRED TO A COURT TRIAL AND ARRAIGNED THE DEFENDANT IN OPEN COURT. DEFENDANT PLEAD NOT GUILTY. WAIVER FOR A JURY TRIAL FILED WITH THE COURT. ALL PARTES ASKED TO BE READY IN COURT WITH WITNESSES ON MONDAY 5/20/2024 @9AM. COURT RECESSED ON THIS MATTER.
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(CR 272). While the clerk’s entry suggests an offer of a court trial by trial counsel, an agreement by the State, and a “waiver for a jury trial” being filed with the court, none of this exists in the record. (CR 2-274). In fact, the only filing on or around May 16, 2024, is a punishment election filed on May 20, 2024, the morning of trial, indicating that Appellant wanted the jury to assess punishment in the event of a conviction. (CR 251).

Assuming, *arguendo*, that there was a valid waiver in this case, the question remains whether that waiver was knowingly and intelligently made. There are several factors courts have considered when determining whether a jury trial waiver was knowing, voluntary, and intelligent. For example, courts have considered whether the defendant

² Interestingly, the “Terms of Plea Bargain” section on the judgment originally said “N/A – COURT TRIAL” but amended to read “WOAR – COURT TRIAL.” WOAR is an abbreviation used in Harris County to indicate an open plea of guilty without an agreed recommendation.

knew about his right to a jury and the nature of the right, whether the defendant executed a written jury waiver, whether the trial court admonished the defendant about his right to a jury, the defendant's education and background and legal sophistication, the level of the defendant's involvement in his defense, his ability to understand courtroom discussion regarding waiver of a jury, the words and actions of the defendant, discussions with trial counsel about the right to a jury and representations of trial counsel, what language the defendant understands and the presence of an interpreter if not English, the lack of an objection before or shortly after the bench trial began, and whether there is a docket entry indicating that the defendant expressly waived his right to a jury on the record and that waiver was voluntary, knowing, and intelligent. *Hobbs*, 298 S.W.3d at 197 (“As a matter of federal constitutional law, the State must establish, on the record, a defendant's express, knowing, and intelligent waiver of jury trial.”).

It is unquestionable that there is no record – neither in the clerk’s documents or within the trial transcript – that Appellant expressly waived his right to a jury trial. The record is also silent as to whether any purported waiver was knowingly, voluntarily and intelligently made.

Few, if any, of the above factors can be analyzed based on the sheer absence of information in the record.

Because Appellant was denied his federal and state constitutional right to a jury trial and the procedural protections required by art. 1.13(a) were violated, Appellant's conviction should be reversed, and his case remanded for a new trial.

CONCLUSION & PRAYER

It is respectfully submitted that Appellant did not expressly, knowingly or intelligently, waive his right to a jury trial; accordingly, Appellant's conviction should be reversed, and the case remanded for a new trial.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on December 26, 2024.

/s/ Inger H. Chandler
INGER H. CHANDLER

CERTIFICATE OF COMPLIANCE

This is to certify that this brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 2,388 words according to the word count on Microsoft Word.

/s/ Inger H. Chandler
INGER H. CHANDLER

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Filing Description: Amended Second Motion to Extend Time to File

Appellant's Brief

Status as of 12/27/2024 8:04 AM CST

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