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Court of Appeals
Division II
State of Washington
6/12/2018 1:08 PM

No. 51262-9--II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

Michael Mansfield
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable James J. Dixon
Cause No. 16-1-01556-34

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether Mansfield knowingly, voluntarily and intelligently waived his right to a jury trial.

B. STATEMENT OF THE CASE.

1. Procedural History

The appellant, Michael Mansfield was charged in Thurston County Superior Court with the crime of theft of a motor vehicle, domestic violence. CP 8. On November 8, 2017, the parties appeared before the trial court for a status hearing. 1 RP 3.¹ At that time, Mansfield's counsel informed the trial court that Mansfield intended to waive jury trial. 1 RP 3. A written waiver of jury trial was filed. CP 18.

The parties entered an agreed order of trial continuance on November 13, 2018. CP 25. At the hearing, the trial court made a record that another case had priority over Mansfield's and no other courtrooms or judges were available. 2 RP 3. Trial in the matter occurred on November 27, 2017. 3 RP 4. The trial court engaged in a colloquy with Mansfield to determine if it was still Mansfield's intention to proceed without a jury. 3 RP 4-6. A bench trial

¹ The verbatim report of proceedings appears in four volumes. For purposes of this brief, volume 1, November 8, 2017, will be referred to as 1 RP; volume 2, November 13, 2017, will be referred to as 2 RP; volume 3, November 27, 2017 will be referred to as 3 RP; and volume 4, December 13, 2017, will be referred to as 4 RP.

followed and the trial court found Mansfield guilty, as charged of the crime of theft of a motor vehicle, domestic violence. 3 RP 146; CP 40-43. The trial court sentenced Mansfield to a mid-range sentence of 13 months. 4 RP 10; CP 50-60.

2. Substantive Facts

Mansfield is the nephew of Donna Stemme. 3 RP 12. Stemme is the owner of a 1996 Ford Explorer that she had loaned to her sister. 3 RP 15. On May 19, 2017, Stemme was notified that the car was missing. 3 RP 13. Stemme's sister Margaret Mansfield had Stemme's Explorer for roughly a year. 3 RP 17, 3 RP 26. Stemme did not authorize any other person to drive the Explorer. 3 RP 17. Mansfield had asked to drive the vehicle previously in April of 2017, and it had been made "very clear" that he could not. 3 RP 17-18, 20. Mansfield had borrowed the car previously, but was not allowed to drive the car after April of 2017. 3 RP 21.

On May 19, 2017, Margaret Mansfield went out to go to work and the car was gone. 3 RP 24-25. Margaret contacted Stemme and the police were contacted. 3 RP 25. Margaret indicated, "I don't let anybody use that car, because it's under my - - it's my responsibility. And so I - - and I also know that she and Michael

have had conflict, so I know he - - she doesn't want him to use the car." 3 RP 26. Margaret also indicated that Michael "never asked" to use the Explorer, except for the one time about a month before the incident. 3 RP 27-28. Mansfield had driven the Explorer before, when he was working for Margaret's business. 3 RP 40. Mansfield had been allowed to drive the vehicle for work purposes since at least October of 2016. 3 RP 52-53. Mansfield was not allowed to drive the car on May 19, 2017. 3 RP 28.

After noticing the car was missing, Margaret obtained a restraining order. 3 RP 29. On May 20, 2017, Margaret returned from babysitting for her daughter and noticed that Mansfield was at her residence. 3 RP 30-31. Law enforcement arrived at the residence and served Mansfield with the restraining order. 3 RP 34, 35. The vehicle was recovered at the Eagles lodge near Margaret's residence. 3 RP 35.

Thurston County Sheriff's Deputy Jordan Potis responded to Margaret's residence along with Thurston County Sheriff's Deputy Michael Stewart. 3 RP 58. Deputy Potis made contact with Mansfield who indicated that his family was upset with him over a car that he had taken. 3 RP 61. Mansfield said that he had been driving the car for years. 3 RP 61. Mansfield said that he had

taken the vehicle and that the car was at the Moose lodge in Yelm. 3 RP 61, 77. The deputies served the temporary order on Mansfield. 3 RP 62. Deputy Stewart later found the vehicle at the Eagles Lodge on Koeppen Road. 3 RP 77.

Mansfield was allowed to leave his mother's residence. 3 RP 63. While Deputy Stewart was out with the vehicle, Mansfield drove by and rolled down his window to make contact with Deputy Stewart, at which Deputy Stewart asked to talk to him about the "vehicle more in depth." 3 RP 79. Mansfield said that he had received a call from a friend who said she needed gas money, so he took his mother's vehicle and did not tell her about it, picked up his friend and took her to a gas station, and then left the car at the Eagles and left in his friend's car. 3 RP 79-80. Mansfield also told Deputy Stewart that he had last driven the vehicle six months before the incident. 3 RP 81.

Mansfield indicated that he took the Explorer at 2 AM on May 19, 2017. 3 RP 104. He admitted that he did not make any attempt, prior to the night of May 20, 2017, to notify law enforcement of the vehicle's location. 3 RP 106. Mansfield contacted law enforcement at about 10:30 PM on May 20, 2017, during his contact with his mother at her residence. 3 RP 107.

C. ARGUMENT.

1. Mansfield knowingly, intelligently and voluntarily waived his right to a jury trial.

The State bears the burden of showing that a defendant's waiver of a jury trial is valid, and that validity is reviewed de novo. State v. Hos, 154 Wn. App. 238, 249-50, 225 P.3d 389 (2010). CrR 6.1 requires that a written waiver of a jury trial be filed and that the court approve it. Even so, failure to file the written waiver is not determinative. A waiver can be done orally on the record if it is done knowingly, intelligently, and voluntarily, without improper influence. State v. Ramirez-Dominguez, 140 Wn. App. 233, 240, 165 P.3d 391 (2007). CrR 6.1(a) is not of constitutional magnitude; it is an evidentiary procedural requirement. Hos, 154 Wn. App. at 250. The rule does not require that the waiver be filed at any particular time. State v. Bugaj, 30 Wn. App. 156, 157, 632 P.2d 917 (1981).

Waivers must be either in writing or orally on the record, but all that is required is some personal expression of waiver by the defendant, not necessarily a colloquy with the court. Id. An explanation of the consequences need not be on the record. State v. Stegall, 124 Wn.2d 719, 724, 881 P.2d 979 (1994). Different

constitutional rights require different levels of inquiry by a reviewing court. A valid waiver of the of the right to counsel or a guilty plea, for example, will usually require a full colloquy on the record to ensure the defendant understands the consequences of his decision. A waiver of a jury trial does not. Id. at 725.

The “reasonable presumption” is against a waiver “absent an adequate record to the contrary.” Ramirez-Dominguez, 140 Wn. App. at 240, citing to State v. Wicke, 91 Wn.2d 638, 645, 591 P.2d 452 (1979). The representation by defense counsel that the defendant has validly waived the right to a jury trial is “relevant evidence and entitled to consideration by the trial court.” State v. Downs, 36 Wn. App. 143, 146, 672 P.2d 416 (1983); *see also* Ramirez-Dominguez, 140 Wn. App. at 240. “Although a writing cannot be regarded as conclusive, it is certainly strong evidence that the accused effectively waived his right to a jury trial. Indeed, the purpose of the writing requirement is to ensure that a waiver is knowing, voluntary and intelligent.” Downs, 36 Wn. App. at 145. “The court and the prosecutor should be entitled to rely on the defendant’s written waiver in compliance with the rule.” State v. Brand, 55 Wn. App. 780, 788, 780 P.2d 894 (1989).

Here, Mansfield executed a written waiver of jury trial with

the assistance of his attorney. CP 18. While the trial court did not engage in a colloquy at the time that the waiver was filed, it was clear that Mansfield's counsel had discussed his constitutional rights with him prior to filing the waiver. His attorney, Mr. Hansen, stated,

"And your Honor, this matter is confirming for trial, as well. Again, I apologize to the court. Mr. Mansfield and I had to discuss an additional matter which I did not anticipate; that is a waiver of jury. And I will be asking my client to sign both the waiver of jury and the trial confirmation order."

1 RP 3. Mr. Hansen later went on to inform the trial court,

"I have submitted a written waiver of jury. As I've said, I appreciate the court taking this up beyond 10:15. It was necessary to discuss my client's rights to a jury trial as well as what he preferred by going forward with a bench trial."

1 RP 4.

At the start of Mansfield's trial, the trial court re-affirmed that Mansfield intended to waive his right to a jury trial. The trial court engaged in the following colloquy with Mansfield:

THE COURT: ...The court notes that Mr. Mansfield has previously filed with the court and the court has accepted a waiver of right to trial. It also is unclear to the court whether the court has conducted a colloquy with Mr. Mansfield regarding his right to waive jury trial. So the Court will have that colloquy now with Mr. Mansfield. Mr. Mansfield, good morning.

MANSFIELD: Good morning.

THE COURT: You have a right, a Constitutional right to a right to trial by a jury. And I see from reviewing the court filed that you filed a piece of paper telling the court that you're giving up that right. Is that true?

MANSFIELD: Yes, Your Honor.

THE COURT: You need to know that you do have a right to a trial by jury. In this case it would be a jury of 12 people. And the Constitution provides you with a right to a trial by 12 people. And in a criminal case, you are entitled to a unanimous verdict. So all 12 people must agree on - - all 12 jurors, if you have a jury trial, must agree on a finding of guilty or not guilty. Do you understand that?

MANSFIELD: Yes.

THE COURT: Is it still your intention to give up your right to a jury trial?

THE DEFENDANT: Yes.

THE COURT: Has anyone made any promises or any threats to you to give up your right to a jury trial?

MANSFIELD: No.

THE COURT: And have you discussed this issue with your lawyer?

MANSFIELD: Yes.

THE COURT: Thanks. The court - - you may be seated. The court accepts Mr. Mansfield's waiver of his right to a trial by jury. Accordingly, this court will be the trier of fact.

3 RP 4 -6.

The trial court's colloquy was sufficient, even if a written waiver had not been filed. See State v. Rangel, 33 Wn.App. 774, 775-776, 657 P.2d 809 (1983); In re Reese, 20 Wn.App. 441, n. 2, 580 P.2d 272, *affirmed by State v. Wicke*, 91 Wn.2d 638 (1979).

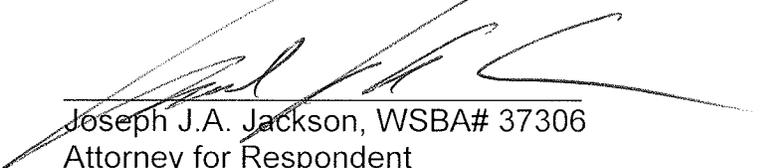
The written and oral record clearly demonstrates that Mansfield knowingly, intelligently, and voluntarily waived his right to a jury with the assistance of counsel and without undue influence. U.S. Const. amend. 6, Wash. Const., Art. 1 § 21. The trial court did not err in accepting Mansfield's waiver.

D. CONCLUSION.

Mansfield knowingly, intelligently and voluntarily waived his right to a jury trial prior to the bench trial that was held in his case. He did so with the assistance of counsel, executed a written waiver, and further acknowledged his intention to waive jury in a colloquy with the trial judge. No error occurred. The State respectfully requests that this Court affirm Mansfield's conviction.

Respectfully submitted this 12th day of June, 2018.

JON TUNHEIM
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CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 12th day of June, 2018, at Olympia, Washington.



CYNTHIA WRIGHT, PARALEGAL

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June 12, 2018 - 1:08 PM

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Appellate Court Case Title: State of Washington, Respondent v Michael Germain Mansfield, Appellant
Superior Court Case Number: 17-1-00882-0

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