NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 2246

STATE OF LOUISIANA

VERSUS

KATHY GUILLIAMS

Judgment Rendered: June 7, 2013

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket Number 502,480

Honorable Elizabeth Wolfe, Judge Presiding

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BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

GUIDRY, J.

Defendant, Kathy Guilliams, was charged by bill of information with vehicular homicide, a violation of La. R.S. 14:32.1. She pled not guilty and waived her right to a jury trial. After a bench trial, defendant was found guilty as charged. The trial court denied defendant's motion for a new trial and sentenced her to five years at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant now appeals, alleging two assignments of error. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

On the evening of May 15, 2005, Louisiana State Trooper Herman H. Newell, III, was dispatched to an accident on La. Hwy. 440, in the area of Crow's Foot, Tangipahoa Parish. He arrived to find a red Buick LeSabre facing west and resting against the guardrail of the river bridge. He also observed a black Dodge Neon facing east and resting in the wood line on the opposite side of the road. Kenneth Robinson, the driver of the Buick LeSabre, was taken to Hood's Hospital in Amite with extensive injuries to his shoulder, face, and head. Robinson later died of those injuries.

During his on-scene investigation, Trooper Newell spoke with defendant, who was the driver of the Dodge Neon. Trooper Newell observed that she appeared confused and smelled of alcohol as she spoke. Defendant was placed under arrest and transported by Trooper Kenneth Giacone to the Tangipahoa Parish Jail where, after being read her Miranda[1] rights, she admitted to consuming four or five beers earlier that evening. Defendant subsequently submitted to breath intoxilyzer testing, the results of which indicated that defendant's blood alcohol content ("BAC") was 0.16 grams percent.

[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

While defendant was being transported to the parish jail, Trooper Newell remained at the scene to reconstruct the accident. He testified at trial as an expert in accident reconstruction. Based on his reconstruction, Trooper Newell testified that defendant was traveling eastbound on La. Hwy. 440 when the accident occurred, and the victim was traveling westbound. Trooper Newell stated that the skid marks he observed, combined with the location of the accident's debris field, led him to conclude that the accident occurred when defendant crossed the center line into the westbound lane and struck the victim's vehicle. At the time of impact, the door skin from defendant's vehicle detached and became lodged into the victim's vehicle. As a result, a support beam from the inside of defendant's door also detached and made its way through the victim's door, lacerating his shoulder and face, and impaling his head.

Defendant did not testify at trial, but she presented two witnesses who testified that the accident scene was filled with people other than law enforcement and emergency personnel, supporting her argument that the area may have been contaminated before a proper investigation could occur. Further, defendant's own accident reconstruction expert, Michael Gillen, testified at trial. He theorized that, based upon the lack of damage to the front end of defendant's vehicle, the accident did not result from a true sideswipe, but from a sideswipe with an angular component of "attack" from the victim's vehicle into the driver's door of defendant's vehicle. However, Mr. Gillen stated that while he could determine the approximate angle of impact, one could not reliably tell where on the roadway the point of impact occurred. He did admit on cross-examination that there was at least one scenario where defendant might have crossed the center line and, due to an overcorrection, the victim's vehicle could have struck defendant's vehicle at his approximated "attack" angle. After hearing all of the evidence, the trial judge

found defendant guilty of vehicular homicide, with the specific finding that her BAC was above 0.15 grams percent at the time of the accident.

ASSIGNMENT OF ERROR #1

In her first assignment of error, defendant argues that the transcript of her final day of trial is grossly incomplete and, therefore, she had been denied her constitutional right to a judicial review of all evidence.

The Louisiana Constitution guarantees that no person shall be subjected to imprisonment without the right of judicial review "based upon a complete record of all evidence upon which the judgment is based." La. Const. art. I, § 19. In felony cases, the court reporter is required to record "all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, statements, and arguments of counsel." La. C. Cr. P. art. 843.

A criminal defendant has a right to a complete transcript of the trial proceedings, particularly where counsel on appeal was not counsel at trial. State v. Landry, 97-0499, p. 3 (La. 6/29/99), 751 So. 2d 214, 215. Without a complete record from which a transcript for appeal may be prepared, a defendant's right of appellate review is rendered meaningless. A slight inaccuracy in a record or an inconsequential omission from it which is immaterial to a proper determination of the appeal does not result in reversal of the conviction. But where a defendant's attorney is unable, through no fault of his own, to review a substantial portion of the trial record for errors so that he may properly perform his duty as appellate counsel, the interests of justice require that the defendant be afforded a new, fully-recorded trial. State v. Ford, 338 So. 2d 107, 110 (La. 1976). See also State v. Brumfield, 96-2667, pp. 15-16 (La. 10/20/98), 737 So. 2d 660, 669-70, cert. denied, 526 U.S. 1025, 119 S.Ct. 1267, 143 L.Ed.2d 362 (1999).

In the instant case, defendant's appellate counsel did not represent her at trial. On January 30, 2012, defendant's appellate counsel filed a motion to suspend briefing and supplement the record on appeal. In this motion, defense counsel alleged that the record did not contain any of the transcripts of defendant's bench trial, which was held on February 8-10, 2011, and May 19, 2011.[2,3] We granted defense counsel's motion and ordered the record to be supplemented.

The record in this case was supplemented four times. Notices of these supplementations were sent out to all parties on June 12, 2012; July 20, 2012; December 20, 2012; and February 6, 2013. Defense counsel filed his only brief in this case on August 31, 2012. In that brief, he urged the assignments of error considered in the instant appeal. The February 6, 2013 supplementation of the record contained the full and complete transcript of the May 19, 2011 proceedings, as well as the relevant exhibits introduced on that day.[4] On February 19, 2013, in light of the final supplementation of the record, we issued a supplemental briefing order, allowing defendant to file a supplemental brief on or before March 5, 2013, and allowing the state to file a supplemental brief on or before March 15, 2013. Neither party elected to file a supplemental brief.

Since the time defendant filed her initial brief raising the issue of an incomplete transcript from the May 19, 2011 continuation of her trial, the record has been supplemented two more times. The February 6, 2013 supplementation of

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[2] On appeal, defense counsel admits that the record contained an incomplete transcript of the May 19, 2011 proceedings, which did not include any of Mr. Gillen's testimony, but did not contain transcripts of the trial proceedings from February 8-10, 2011; however, the record was supplemented with the transcript of the February 8-10, 2011 trial proceedings in July 2012.

[3] Defendant's bench trial was recessed on February 10, 2011, to allow her to call her own expert, Mr. Gillen, at a later date because on that day, he was testifying in federal court in an unrelated matter.

[4] Defendant entered four exhibits into evidence at trial – one joint exhibit with the state, and three exhibits marked D-2, D-3, and D-4. Exhibits D-3 and D-4, an accident reconstruction diagram and Mr. Gillen's curriculum vitae, were provided to this court at the time the record was supplemented. Cathy McElveen, a deputy clerk with the Tangipahoa Parish Clerk of Court's Office, filed a notarized affidavit stating that Exhibit D-2, a dash camera recording from Trooper Newell's vehicle, had been lost or misplaced. This affidavit further stated that all counsel had been notified of this fact and that they agreed to submit this appeal without said exhibit.

the record cured the defect complained of in defendant's first assignment of error, and defendant has not filed a supplemental brief raising any additional assignments of error.

This assignment of error is moot.

ASSIGNMENT OF ERROR #2

In her second assignment of error, defendant alleges that the record does not adequately reflect that she validly waived her constitutional right to a trial by jury.

A defendant in a non-capital case may waive her right to a jury trial and elect to be tried by the judge. La. Const. art. I, § 17(A); La. C. Cr. P. art. 780(A). Generally, the waiver is entered at arraignment. See La. C. Cr. P. art. 780(A). A waiver of trial by jury is valid only if the defendant acted voluntarily and knowingly. See State v. Kahey, 436 So. 2d 475, 486 (La. 1983). A waiver of this right is never presumed. State v. Brooks, 01-1138, p. 5 (La. App. 1st Cir. 3/28/02), 814 So. 2d 72, 76, writ denied, 02-1215 (La. 11/22/02), 829 So. 2d 1037. However, no special form is required for a defendant to waive her right to a jury trial. State v. Coleman, 09-1388, p. 4 (La. App. 1st Cir. 2/12/10), 35 So. 3d 1096, 1098, writ denied, 10-0894 (La. 4/29/11), 62 So. 3d 103. Counsel may waive the right on the defendant's behalf, provided that the defendant's decision to do so was made knowingly and intelligently. State v. Pierre, 02-2665 (La. 3/28/03), 842 So. 2d 321, 322 (per curiam).

In the instant case, the minutes reflect that defendant was advised of her rights at her arraignment on July 21, 2005. Defendant's trial counsel filed a motion to waive trial by jury on September 23, 2010. This motion stated that defense counsel and defendant considered the case and consulted together about the waiver and that defendant fully understood her right to trial by jury and waived that right knowingly, voluntarily, and intelligently. Defendant's trial counsel

confirmed this waiver in open court, in the presence of his client, on February 7, 2011, the first day of trial.

Despite the fact that there is no colloquy between the trial judge and defendant to highlight her understanding of the right to a jury trial and her knowing and voluntary waiver of this right, there is adequate evidence to demonstrate a valid jury trial waiver. First, defendant's trial counsel filed a written motion waiving her right to a jury trial. The motion itself stated that defendant understood that right and knowingly, voluntarily, and intelligently waived it. Second, defense counsel confirmed that waiver in defendant's presence prior to the beginning of trial. Therefore, under these circumstances, we disagree with defendant's claim on appeal that she did not validly waive her right to trial by jury.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.