

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2016 KA 0942**

**STATE OF LOUISIANA**

**VERSUS**

**JARED LASHAUN LANE**

**Judgment Rendered: DEC 22 2016**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. 05-14-0950

Honorable Bonnie Jackson, Judge Presiding

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Jared Lashaun Lane

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**BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.**

*Guidry, J. Dissents based on the conditional appearance.*

*PMC*  
*QAW*

**McCLENDON, J.**

Defendant, Jared Lashaun Lane, was charged by bill of information with stalking, a violation of Louisiana Revised Statutes 14:40.2. He entered a plea of not guilty and, following a bench trial, was found guilty as charged. Defendant was then sentenced to one year imprisonment with credit for time served. The district court suspended the balance of the sentence and placed defendant on unsupervised probation for two years.<sup>1</sup> The district court also ordered defendant to pay a fine of five hundred dollars plus court costs. Defendant now appeals, arguing that the district court erred in failing to try him before a six-person jury. For the following reasons, we conditionally affirm defendant's conviction and sentence and remand with instructions to the district court for an evidentiary hearing.

**FACTS**

Defendant and his neighbor, Frank Jarrel, engaged in multiple disputes over a period of approximately five years. The two lived across the street from each other on Heath Drive in Baker, Louisiana. The police were contacted multiple times in connection with the disputes. After being instructed by the police not to walk in front of Jarrel's house, defendant continued to do so. Feeling threatened by defendant's behavior, Jarrel contacted the police, and defendant was arrested for stalking. The amended bill of information charged that the offense occurred between July 1, 2013, and December 31, 2014.

**JURY-TRIAL WAIVER**

In his sole assignment of error, defendant argues that the district court erred in not trying his case before a six-person jury. According to defendant, because his offense was punishable by imprisonment for more than six months, he was entitled to a jury trial. Defendant argues that he was not informed of this right.

A criminal case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, all of whom must concur to render a verdict. LSA-Const. art. I, § 17A; see

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<sup>1</sup> Defendant's probation was terminated on August 24, 2016. It was noted in the hearing that both defendant and the victim were forced to move out of their homes due to flooding.

also LSA-C.Cr.P. art. 779A ("A defendant charged with a misdemeanor in which the punishment, as set forth in the statute defining the offense, may be a fine in excess of one thousand dollars or imprisonment for more than six months shall be tried by a jury of six jurors, all of whom must concur to render a verdict."). In the instant case, defendant was charged with stalking, a violation of LSA-R.S. 14:40.2. Pursuant to LSA-R.S. 14:40.2B(1)(a), on first conviction, stalking is punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and imprisonment for not less than thirty days nor more than one year. Thus, defendant was entitled to a trial by a six-person jury.

The right to trial by jury in felony and certain misdemeanor cases is protected by both the federal and state constitutions. See U.S. Const. amend. VI; LSA-Const. art. I, §§ 16, 17. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury, but no later than forty-five days prior to the trial date, and the waiver shall be irrevocable. LSA-Const. art. I, § 17A. A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge. At the time of arraignment, the defendant in such cases shall be informed by the district court of his right to waive trial by jury. LSA-C.Cr.P. art. 780A.

The August 6, 2014, minutes and transcript of arraignment reflect that the case was assigned for trial on January 7, 2015. Neither indicate which mode of trial was to be used. Nevertheless, on January 7, a bench trial was commenced. The record, however, does not contain a jury-trial waiver. The waiver of a criminal defendant's right to trial by jury is not presumed; there operates, in fact, a presumption against such waiver that must be rebutted. **State v. Cappel**, 525 So.2d 335, 337 (La.App. 1 Cir.), writ denied, 531 So.3d 468 (La. 1988). When the record does not clearly indicate a valid waiver of the right to a jury trial, recent trend has not been to reverse, but to remand the case to the district court for an evidentiary hearing on the issue of whether a valid jury waiver was obtained. See **State v. Nanlal**, 97-0786 (La. 9/26/97), 701 So.2d 963. In **Cappel**, this Court noted that when the record is insufficient to determine whether the defendant knowingly and intelligently waived his right to a jury

trial, the testimony by the defendant and defense counsel at an evidentiary hearing would certainly be relevant, if not dispositive of the issue. **Cappel**, 525 So.2d at 337 n.3.

Accordingly, the conviction and sentence are conditionally affirmed. We remand this case for the district court to conduct an evidentiary hearing within thirty days to determine whether defendant knowingly and intelligently waived his right to a jury trial. If the evidence shows that defendant did not execute such a waiver, the district court judge is instructed to set aside the conviction and sentence and grant a new trial. We note that double jeopardy does not preclude the State from retrying a defendant whose conviction is set aside because of judicial error. See **State v. Mayeax**, 498 So.2d 701, 705 (La. 1986). If, on the other hand, the district court concludes that defendant did waive his right to a jury trial, defendant may appeal only that decision to this court. See **State v. Welch**, 12-1531 (La.App. 1 Cir. 3/22/13), 115 So.3d 490, 503-04; see also **State v. Howard**, 09-928 (La.App. 5 Cir. 5/25/10), 37 So.3d 1099, 1105.

Within ten days after the hearing, the district court shall supplement the appeal record with the minutes and transcript of the evidentiary hearing, so that defendant's appeal can continue to final disposition. See **State v. Chavis**, 11-1685 (La.App. 1 Cir. 5/2/12), 2012 WL 1550868 (unpublished); **State v. Laurent**, 10-0877 (La.App. 1 Cir. 12/22/10), 2010 WL 5464165 (unpublished).

**CONVICTION AND SENTENCE CONDITIONALLY AFFIRMED; REMANDED WITH INSTRUCTIONS FOR DETERMINATION OF WHETHER DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO A TRIAL BY JURY.**