STATE OF LOUISIANA	*	**NO. 2001-KA-2004**
VERSUS	*	**COURT OF APPEAL**
ANIBAL DUFFILD	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-083, SECTION "D"
Honorable Frank A. Marullo, Judge
* * * * * *
JUDGE

JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED.

STATEMENT OF CASE

The defendant, Anibal Duffild, was charged by bill of information on June 19, 2000, with simple burglary. He pled not guilty at his arraignment on June 22, 2000. Following a lunacy hearing on June 27, 2000, the defendant was found competent to proceed to trial. On July 25, 2000, the trial court found probable cause and denied the motion to suppress the evidence. Following a bench trial on August 16, 2000, the defendant was found guilty as charged. The defendant was sentenced on September 15, 2000, to serve twelve years at hard labor. On February 22, 2001, the defendant pled guilty to a multiple bill of information. After vacating the previous sentence imposed, the trial court resentenced the defendant as a third felony offender to serve eight years at hard labor. The defendant was granted an out-of-time appeal on October 19, 2001.

STATEMENT OF FACTS

The record reflects that on June 11, 2000 at approximately four o'clock in the morning, Officer James was driving in the 1700 block of Coliseum Street when he observed a Jeep Cherokee with the alarm sounding.

The officer turned his spotlight on the vehicle and observed a subject inside the front passenger side of the vehicle, who was tugging on the dashboard. The subject exited the vehicle and fled with the officer in pursuit on foot. As the officer was pursuing the subject, he broadcast a description of the perpetrator over his radio. The subject was described as a white male approximately five feet seven to five feet nine inches tall wearing a blue shirt and blue shorts. Officer James' pursuit ended when the subject entered the yard of 1423 Terpischore, but by then, several back-up officers had responded. The perimeter of the area was secured, and Officer James additionally informed the other officers that the subject had either long hair or a ponytail. Officer James then returned to the 1700 block of Coliseum Street where he observed that the passenger window on the Jeep Cherokee was broken and that the stereo was partially removed from the dashboard. The owner of the vehicle, Eric Strachan, stated that he did not give anyone permission to enter the vehicle.

A K-9 unit was called to the area cordoned off by the officers, but the dog was unable to locate the subject. A couple of the officers then began a sweep of the area. Officer Sedgebeer located the subject under the house at 1424 Melpomene Street. The subject was then relocated to the 1700 block of Coliseum Street where Officer James identified him.

A friend of the defendant, Dianne Jeffery, testified that she was with him at his home on Camp Street between the hours of 10:30 p.m. on June 10th and 5:45 a.m. on June 11th. They watched three videos and talked. After walking her to the streetcar line on St. Charles Avenue, the defendant walked away in the opposite direction.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant asserts that the trial court erred by permitting him to proceed to trial before the court alone without first obtaining an adequate waiver of his right to trial by jury.

Except for offenses punishable by death, a defendant may knowingly and intelligently waive his right to trial by jury and elect trial by the district judge. La. C.Cr.P. art. 780. However, a waiver of jury trial is never presumed. State v. McCarroll, 337 So.2d 475 (La. 1976). The issue was addressed by this Court in State v. Richardson, 575 So.2d 421, 424-425 (La. App. 4 Cir. 1/31/91), as follows:

> Louisiana jurisprudence has consistently held that in order for a waiver to have been knowingly and intelligently made, the record on appeal must show some manifestation of an effective waiver. State v. Muller, 351 So.2d 143, 146 (La. 1977). The courts have further held that the preferable practice is for the trial judge to advise the defendant personally on the

record of his right to trial by jury and require the defendant to waive the right personally either in writing or by oral statement in open court on the record. State v. Wilson, 437 So.2d 272 (La. 1983); State v. Kahey, 436 So.2d 475 (La. 1983). However, the Louisiana Supreme Court has upheld cases in which such a waiver has been made by a defendant's attorney, rather than the defendant personally, when the defendant was considered to have understood his right to a jury trial and still consented to such a waiver. State v. Phillips, 365 So.2d 1304, 1308-09 (La. 1978); cert. denied, 442 U.S. 919, 99 S.Ct. 2843, 61 L.Ed.2d 287 (1979).

In the present case, defendant appeared personally at his arraignment, and the transcript from this hearing reflects that he was expressly informed by the trial judge of his right to a jury trial and his right to elect trial by judge. Defendant affirmatively stated at that time that he understood those rights. On the date this matter was initially set for trial, the trial court, after a bench conference with defense counsel, stated in open court that defendant had elected trial by judge. Defendant did not object to this assertion, although he was present in court at the time. This matter was continued for trial on the following day, when the trial court stated on the record at the start of trial that defendant had waived his right to trial by jury. Again, defendant was present in court at this time but made no indications that he had not agreed to proceed to trial before the judge alone.

We find no error in the determination of the trial judge that this defendant gave his informed consent to the waiver of the jury trial. The trial judge expressly informed defendant at the arraignment of his right to choose between a judge trial and a jury trial, and defendant indicated on the record that he understood these rights. Further, defendant was aware that the matter was scheduled for a judge trial and did not dispute or reject the trial court's statements made on two separate occasions that defendant desired to waive his right to a jury trial. We also note that this defendant has prior experience as an accused in a criminal prosecution, at which time he pled guilty and waived his constitutional right to trial by jury. State v. Phillips, supra. Under these circumstances, we find that the

> waiver in the present case was knowingly and intelligently given.

Based on Richardson, the waiver in the present case appears knowingly and intelligently given. Although the transcript of arraignment is not part of the record, the minute entry of arraignment on June 22, 2000 shows that the defendant personally appeared and that he was informed of his right to a jury trial. Like Richardson, the defendant here has prior experience as an accused in at least two criminal prosecutions, at which time he pled guilty and waived his constitutional right to trial by jury. Moreover, at the beginning of trial on August 16, 2000, the defendant answered affirmatively when asked by the trial court whether he had selected a judge trial.

For the foregoing reasons, we affirm the defendant's conviction and sentence.

AFFIRMED.