

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0478**
VERSUS * **COURT OF APPEAL**
PAMELA A. EDWARDS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 423-351, SECTION "G"
Honorable Julian A. Parker, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,
Judge David S. Gorbaty)

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REMANDED

Pamela Edwards appeals her conviction for crime against nature by solicitation claiming that she did not knowingly and voluntarily waive her right to a trial by jury. For the following reasons, we remand this matter to the district court for an evidentiary hearing to determine whether Ms. Edwards knowingly and voluntarily waived that right.

STATEMENT OF CASE:

Defendant Pamela Edwards was charged by bill of information with one count of crime against nature by solicitation in violation of La. Rev. Stat. 14:89(2). Following a judge trial on September 11, 2001, the trial court found Ms. Edwards guilty as charged. On October 24, 2001, the trial court denied the defendant's motion for post verdict judgment of acquittal and a motion for new trial. On November 26, 2001, Ms. Edwards pled guilty to being a triple offender, and waived the delays for sentencing. The trial court sentenced her to forty months at hard labor with credit for time served as a triple offender. On that same date the trial court granted the defendant's

motion for appeal.

STATEMENT OF FACT:

Ms. Edwards was arrested on June 27, 2001, for crime against nature by solicitation after she approached Detective Wilbert Theodore, an undercover police officer, and asked him how much money he had. The detective and Ms. Edwards then agreed upon an amount for certain sexual acts. Detective Theodore and Ms. Edwards drove away in the unmarked car, and the detective gave a pre-determined signal to other officers nearby. Ms. Edwards was subsequently arrested. At trial, she admitted she had been working as a prostitute the day she was arrested, but she denied soliciting the detective when he approached her.

ERRORS PATENT:

A review of the record revealed no errors patent.

DISCUSSION:

In her sole assignment of error, Ms. Edwards complains that the trial court did not elicit a knowing and voluntary waiver of her right to a jury trial in violation of her constitutional rights.

Louisiana Code of Criminal Procedure art. 780 provides, in part:

A. 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 court of his right to waive trial by jury.

B. The defendant shall exercise his right to waive trial by jury in accordance with the time limits set forth in Article 521. However, with permission of the court, he may exercise his right to waive trial by jury at any time prior to the commencement of trial.

In *State v. Abbott*, 92-2731, p. 3 (La.App. 4 Cir. 2/25/94), 634 So.2d 911, 913, this Court stated that the waiver of trial by jury was valid only if the defendant acted voluntarily and knowingly. The Court further stated that the preferred method of ensuring that right was for the trial judge to advise the defendant personally on the record of his right to a jury trial and to require the defendant to waive the right personally, either in writing or by oral statement in open court on the record. However, as noted by this Court in *State v. Richardson*, 575 So.2d 421 (La.App. 4 Cir. 1991), the Supreme Court has upheld cases in which a waiver of jury trial was made by the 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 the waiver.

The waiver of the right to a jury trial cannot be presumed. *State v.*

Wolfe, 98-0345, p.6 (La.App. 4 Cir. 4/21/99), 738 So.2d 1093, 1097.

In *State v. Moses*, 2001-0909, p.4 (La.App. 4 Cir. 12/27/01), 806 So.2d 83, 86, citing *State v. Nanlal*, 97-0786 (La. 9/26/97), 701 So.2d 963, this Court indicated that where the record does not reflect a valid waiver of a defendant's right to trial by jury, the proper procedure is to remand the case to the district court for an evidentiary hearing to determine whether the defendant validly waived that right. If the evidence indicates that the defendant did not make a valid waiver of his right to trial by jury, the district court must set aside the defendant's conviction and sentence, and grant him a new trial.

In the instant case, as in *Moses, supra*, the record does not contain any evidence that Ms. Edwards knowingly and voluntarily waived her right to a jury trial. The transcript of the proceedings on September 11, 2001, contains a brief exchange between the trial judge and Ms. Edwards' counsel, Mr.

Hart:

Court: Let's go to the trial page. Pamela Edwards. This is before us for trial. Is this your case?

Mr. Hart: Pamela Edwards is my client. Yes.

Court: Pamela Edwards. Is that judge or jury?

Mr. Hart: Judge trial. I spoke with my client about this and advised her against this but that is her election.

Court: You advise people not [to] have judge trials?

Mr. Hart: I advised her in this case that the defense was better presented by [sic] jury.

Court: All right. Sheriff, take her handcuffs off for trial, so she can assist Mr. Hart.

CONCLUSION:

Because the record does not indicate that Ms. Edwards was properly advised of her right to a jury trial such that she was able to make a knowing and voluntary waiver of that right, we remand this matter to the trial court for an evidentiary hearing to determine whether she validly waived her right to jury trial.

REMANDED