

[Cite as *State v. Cantie*, 2010-Ohio-5350.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93864**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JESSIE CANTIE**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-524678

**BEFORE:** Celebrezze, J., Rocco, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** November 4, 2010

## **ATTORNEYS FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Jessie Cantie, appeals his conviction for having a weapon while under disability, alleging that his waiver of a trial by jury was not made knowingly, intelligently, and voluntarily. After a thorough review of the record and pertinent law, we affirm appellant's conviction.

{¶ 2} On May 23, 2009, appellant was enjoying his evening at the Gotcha Inn in Cleveland, Ohio. Jarius Jackson, a security guard at the Gotcha Inn, testified that at a point in the evening close to closing time,

appellant exited the bar with a drink in his hand. Jackson instructed appellant to reenter the bar to finish his drink. Jackson testified that 15 to 20 minutes later, he saw appellant outside of the club with a gun in his right hand. Jackson waited until appellant was some distance away from the club and a group of patrons who were congregating outside, and then he tackled appellant. The gun was recovered a few feet from appellant.

{¶ 3} The police arrived on scene to find appellant in handcuffs and an unloaded gun on the trunk of Jackson's car along with four rounds of ammunition that Jackson had removed from the firearm. Officer Guy Sako of the Cleveland police department interviewed Jackson and attempted to speak with appellant, who was too intoxicated to properly communicate what happened. Officer Sako placed appellant in a zone car and transported him to the Cleveland police station where he was processed. Officer Sako testified that while on their way to the police station and after being Mirandized, appellant admitted to officers that he had just gotten out of jail for "hitting a lick," a term the officer interpreted as robbing a drug dealer.

{¶ 4} Appellant was indicted on June 5, 2009 on two counts: one count of tampering with evidence in violation R.C. 2921.12(A)(1) and one count of having a weapon while under disability in violation of R.C. 2923.13(A)(2). He waived his right to a jury trial on August 6, 2009, and a bench trial commenced on the same day. At its conclusion, appellant was found guilty of

having a weapon while under disability, but was acquitted of tampering with evidence. He was sentenced to three years in prison. He then filed the instant appeal, assigning one error for our review.

### **Law and Analysis**

{¶ 5} Appellant argues that the jury waiver “was not knowingly, intelligently and voluntarily made when the trial court failed to conduct a colloquy with [him] prior to accepting the waiver.”

### **Waiver of Trial by Jury**

{¶ 6} The right to a trial by jury in criminal matters is guaranteed by the Ohio and United States Constitutions. *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, 872 N.E.2d 279, ¶6. This fundamental right must be closely guarded by the court and its officers. In that vein, the state of Ohio has set forth certain requirements that must be satisfied to properly waive this right. R.C. 2945.05 requires that a jury waiver “shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof. \* \* \*

{¶ 7} “Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel.”

{¶ 8} The Ohio Supreme Court has further clarified what is required to comply with this statute, holding, “to be valid, a waiver must meet five

conditions. It must be (1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court.” *Lomax* at ¶9. The Court went on to note that “a trial court does not need to engage in an extended colloquy with the defendant in order to comply with the statutory requirement that a jury waiver be made in open court. There must be, however, some evidence in the record of the proceedings that the defendant acknowledged the waiver to the trial court while in the presence of counsel, if any. Absent such evidence, the waiver does not comply with the requirements of R.C. 2945.05 and is therefore invalid.” *Id.* at ¶42.

{¶ 9} In the present case, the trial judge addressed appellant shortly before trial stating: “Mr. Cantie, we’ve got you here in Case Number 534678, state of Ohio versus Mr. Cantie. And, Mr. Cantie, it’s my understanding that you’re going to waive a jury trial and try the case to me.”

{¶ 10} Appellant answered affirmatively, and the judge asked, “[and] you’ve signed this form here, sir?” Appellant answered, “[y]es sir.” The court then asked appellant’s counsel to attest to that, which he did. The waiver was then journalized, and the case proceeded to a bench trial at that time.

{¶ 11} Appellant acknowledged his waiver in open court with counsel present, after an opportunity for consultation. The waiver set forth the rights he was giving up by trying his case to the judge. Appellant’s counsel

also acknowledged that he explained the waiver to appellant and advised him of its impact. According to the holding in *Lomax* and numerous other decisions of this court, this brief colloquy is all that is required to satisfy the open court requirement of R.C. 2945.05. See *State v. Perry*, Cuyahoga App. No. 90497, 2008-Ohio-5588; *State v. Franklin*, Cuyahoga App. No. 81426, 2003-Ohio-2649.

{¶ 12} The jury waiver satisfied the other four requirements because it was (1) in writing (2) signed by appellant after he had a chance to consult with counsel, (3) filed, and (4) made a part of the record. Therefore, appellant's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

**KENNETH A. ROCCO, P.J., and  
MARY J. BOYLE, J., CONCUR**