

STATEMENT OF THE CASE

Appellant Darren A. Snyder appeals his conviction for battery as a class A misdemeanor.¹ We reverse and remand with instructions.

ISSUES

Snyder raises two issues, one of which we find dispositive and restate as whether the trial court erred by holding a bench trial after Snyder filed a demand for a jury trial.²

FACTS

On May 15, 2007, the State charged Snyder with two counts of battery, both as class A misdemeanors, and one count of possession of marijuana as a class A misdemeanor³ in Lower Cause Number 20D06-0705-CM-208. On May 17, 2007, Snyder, by counsel, filed a Demand for Trial by Jury.

On August 22, 2007, the case was transferred to another court. Due to a scrivener's error, the transfer was not completed until March 11, 2008, when the case was given its current Lower Cause Number, 20D02-0803-CM-7.

On April 13, 2009, Snyder's counsel withdrew, and the trial court appointed new counsel for Snyder.

On August 11, 2009, the case was tried to the bench. Snyder did not object to the bench trial. On August 22, 2009, the trial court found Snyder guilty of the first count of battery and not guilty of the remaining two (2) charges.

DISCUSSION AND DECISION

¹ Ind. Code § 35-42-2-1.

² Snyder also argues that he received ineffective assistance of trial counsel, but we do not address this issue due to our resolution of his claim that he was denied his right to a jury trial.

³ Ind. Code § 35-48-4-11.

The right to a trial by jury is a fundamental linchpin of our system of criminal justice. *See Kellems v. State*, 849 N.E.2d 1110, 1112 (Ind. 2006). That right is secured by both the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Indiana Constitution.⁴ These constitutional provisions protect the right to trial by jury without distinction between felonies and misdemeanors.⁵ Nevertheless, Indiana Criminal Rule 22 specifies the method by which a defendant preserves his or her right to a jury trial in a misdemeanor case. That rule provides, in relevant part:

A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor not later than ten (10) days before his first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

Indiana Criminal Rule 22.

The right to a jury trial may be waived, but waiver of this right must be made in a knowing, intelligent, and voluntary manner, with sufficient awareness of the surrounding circumstances and the consequences. *Doughty v. State*, 470 N.E.2d 69, 70 (Ind. 1984). The record must reflect that such a waiver was made so that the question of an effective waiver can be reviewed even though no objection was made at trial. *Id.* It is the duty of courts to assume in a criminal case that the defendant will want a trial by jury and require

⁴ The Sixth Amendment to the United States Constitution provides, in relevant part, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed;” Article I, Section 13 of the Indiana Constitution provides, in relevant part, “[i]n all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury,”

⁵ Furthermore, Ind. Code § 35-37-1-2, which addresses jury trials and bench trials in criminal cases, does not distinguish between felonies and misdemeanors. That statute provides that parties, “with the assent of the court, may submit the trial to the court. All other trials must be by jury.” *See id.*

any waiver of jury trial to be a knowing and voluntary choice of the defendant, personally expressed by him or her *viva voce* or in writing, and memorialized on the court's record. *Perkins v. State*, 541 N.E.2d 927, 928 (Ind. 1989).

In this case, Snyder was charged with three (3) misdemeanors. The State does not dispute that Snyder, by his first counsel, timely filed a Demand for Trial by Jury, thereby preserving Snyder's right to a trial by jury pursuant to Indiana Criminal Rule 22. Thus, the question is whether Snyder waived his right to a jury trial after filing the Demand for Trial by Jury. Snyder did not file a waiver of his right to jury trial, and the trial court's Chronological Case Summary does not indicate that waiver was discussed at any hearing. Furthermore, the State concedes that Snyder "never waived his right to a jury trial orally or in writing." Appellee's Br. p. 6. Therefore, the record does not reflect that Snyder knowingly, intelligently, and voluntarily waived his right to a jury trial. The procedural record of this case was doubtlessly complicated by the delayed transfer between courts and by Snyder's change of counsel. Nevertheless, in the absence of any memorialization of Snyder's waiver of his right to a trial by jury, this case must be reversed and remanded for a new trial.

The State contends that Snyder acquiesced to a bench trial by failing to object to the trial court's orders scheduling the bench trial or during the bench trial, and Snyder's acquiescence constitutes waiver. We disagree. In a misdemeanor case, a defendant may waive a right to a jury trial by failing to comply with the requirements of Indiana Criminal Rule 22. *See Belazi v. State*, 525 N.E.2d 351, 352 (Ind. Ct. App. 1988), *reh'g denied, transfer denied* (finding waiver because the misdemeanor appellant was advised

of his right to a jury trial and the deadline for requesting a jury trial, but failed to file a request). By contrast, where, as here, a defendant preserves his or her right to a jury trial, failure to object to a bench trial is insufficient to constitute waiver. *See Perkins*, 541 N.E.2d at 928 (refusing to find that appellant had waived his right to a jury trial, even though appellant failed to object at the bench trial, because the record did not indicate that appellant “expressed a conscious choice” to give up the right to trial by jury).

CONCLUSION

For the reasons stated above, we reverse the judgment of the trial court and remand with instructions to vacate Snyder’s conviction and hold a new trial.

Reversed and remanded.

BAILEY, J., and CRONE, J., concur.