MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amanda Lynn Wilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 9, 2021

Court of Appeals Case No. 21A-CR-1166

Appeal from the Hendricks Superior Court

The Honorable Rhett M. Stuard, Judge

Trial Court Cause No. 32D02-2007-CM-601

Altice, Judge.

Case Summary

[1] Following a bench trial, Amanda Wilson was convicted of battery resulting in bodily injury as a Class A misdemeanor and disorderly conduct as a Class B misdemeanor. The sole issue on appeal is whether she knowingly waived her right to a jury trial.

[2] We affirm.

Facts & Procedural History

[3] After an altercation at a bar, the State charged Wilson with battery resulting in bodily injury as a Class A misdemeanor and disorderly conduct as a Class B misdemeanor. The trial court set an initial hearing and ordered the clerk to issue a summons to Wilson. After Wilson received the summons, counsel appeared on her behalf and, on August 19, 2020, filed a motion to waive initial hearing, which stated:

> Counsel for the Defendant would move the Court to waive the Initial Hearing in this matter. The Defendant has been advised of h[er] Constitutional Rights under the Constitution of the State of Indiana, and of the United States. Furthermore, Counsel has advised the Defendant of the charges, and all possible penalties that the Defendant may face in this matter. Therefore, Counsel would ask that the Initial Hearing in this matter be waived.

Appellant's Appendix Vol. 2 at 21. The trial court granted the motion and set the matter for a bench trial. Thereafter, Wilson's counsel filed several motions to continue the bench trial. The final motion, filed January 21, 2021, contained a

specific request by Wilson for the matter to be "set for a contested Bench Trial." *Id*. at 29. A bench trial was held May 19, 2021, which was Wilson's first and only appearance before the trial court. At the conclusion of the evidence, the trial court found Wilson guilty as charged and sentenced her to concurrent terms of 180 days, all suspended to probation. Wilson now appeals.

Discussion & Decision

[4] Wilson argues that she was denied her right to a misdemeanor jury trial. We begin by noting that the right to a jury trial is guaranteed by both Article 1, Section 13 of the Indiana Constitution and the Sixth Amendment of the United States Constitution. *Young v. State*, 973 N.E.2d 643, 645 (Ind. Ct. App. 2012). While the Constitution does not differentiate between felonies and misdemeanors, in Indiana the procedure for asserting the right to a jury trial in misdemeanor cases is controlled by Ind. Crim. Rule 22 (Rule 22), which 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.

"Thus, when charged with a misdemeanor, a defendant can waive her right to a jury trial by failing to make a timely demand for trial by jury." *Fiandt v. State*, 996 N.E.2d 421, 423 (Ind. Ct. App. 2013) (quoting *Young*, 973 N.E.2d at 645).

[5] As this court has observed, "[t]he right to a jury trial is a fundamental right, and while the manner of preserving the right [in a misdemeanor case] is controlled by [Rule] 22, it is not diminished." *Duncan v. State*, 975 N.E.2d 838, 842 (Ind. Ct. App. 2012). Indeed, it remains that even though a defendant charged with a misdemeanor can waive her right to a jury trial by inaction, it must also be shown that the waiver was "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). Additionally, the waiver needs to be personal. *Duncan*, 975 N.E.2d at 843. In a misdemeanor case, the personal nature of the waiver can be inferred where the defendant fails to assert the right to a jury trial and there is evidence that the waiver is knowing, voluntary, and intelligent. *Id*.

[6] In order to establish a valid waiver in a misdemeanor case, the record is sufficient if

> 1) it does not contain a request for a trial by jury; 2) it evidences that the defendant was fully advised of the right to a trial by jury and of the consequences for failing to timely request the right; and 3) it reflects that the defendant was able to understand the advice.

Eldridge v. State, 627 N.E.2d 844 (Ind. Ct. App. 1994), *trans. denied*. On appeal, we consider the entire record to determine whether the defendant has made a voluntary, knowing, and intelligent waiver. *Duncan*, 975 N.E.2d at 842.

[7] Wilson directs us to *Hudson v.State*, 109 N.E.3d 1061 (Ind. Ct. App. 2018), *Duncan*, and *Levels v. State*, 972 N.E.2d 972 (Ind. Ct. App. 2012), in support of her argument that she did not knowingly, voluntarily, and intelligently waive her right to a misdemeanor jury trial. In *Hudson*, on the day of the bench trial, the defendant expressed his dissatisfaction with his public defender and indicated that he thought the matter was set for a jury trial. In *Duncan*, where there was no indication in the record of an advisement by counsel or the trial court, this court refused to "assume from a silent record" that the defendant was properly informed of his rights. 975 N.E.2d at 843. In *Levels*, the defendant told the trial court he wanted a jury trial but did not make the written demand as required by Rule 22 because he was never properly advised.

[8] The present case is distinguishable from *Hudson*, *Duncan*, and *Levels*, in at least one crucial respect. Wilson, by counsel, actively sought to forgo the initial hearing before the trial court, during which she presumably would have received the appropriate advisements. In the motion to waive the initial hearing, the trial court was assured that Wilson had been advised by counsel of her constitutional rights. The record is therefore not silent. Further, after several continuances, Wilson expressly asked the trial court to set the matter for "a contested Bench Trial" and then failed to raise any objection to being tried by the court on the day of her trial. *Appellant's Appendix Vol. 2* at 29.

[9] Under these circumstances, and especially in light of her "affirmative request to the court" to set the matter for a bench trial, we find Wilson's alleged error to be invited error, which has been expanded "to foreclose even constitutional claims." *Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019) (citing, for example, *Brewington v. State*, 7 N.E.3d 946, 977 (Ind. 2014)). After asking the trial court to waive the initial hearing, assuring the trial court that she had been advised of her constitutional rights, and then affirmatively requesting that the matter be set for a bench trial, Wilson cannot now complain that she was denied her constitutional right to a jury trial.

[10] Judgment affirmed.

Bradford, C. J. and Robb, J., concur.