

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 1393

STATE OF LOUISIANA

VERSUS

DEAN FAVRON

DATE OF JUDGMENT: MAR 06 2015

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
NUMBER 27,216, DIVISION E, PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE ALVIN TURNER, JR., JUDGE

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Dean Favron

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

CHUTZ, J.,

The defendant, Dean Favron, was charged by amended bill of information with armed robbery, a violation of La. R.S. 14:64. He pled not guilty and waived his right to a jury trial. After a bench trial, the defendant was found guilty as charged. The defendant filed a pro se "Motion for Judgment of Acquittal," which the district court denied. He was sentenced to twenty-five years at hard labor, without benefit of parole, probation, or suspension of sentence. The defendant now appeals, alleging two assignments of error. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On July 20, 2010, at approximately 3:30 a.m., the victim, Jeffrey Holmes, walked outside of his apartment on Airline Highway in Gonzales, Louisiana, and proceeded to get inside his car in order to drive to work. He started the engine and adjusted the radio, but as he reached to shut the car door, he felt resistance. The defendant was holding a pistol five or six inches from the victim's face. The defendant demanded that the victim give him cash. The victim gave the defendant all the cash that he had, amounting to \$3.00 or \$4.00. After ordering the victim to give him the car keys to his car, the defendant stated that "they" were making him do this because he had just gotten out of jail and could not find a job. The defendant returned the victim's apartment key to him and then drove away in the victim's car. The victim noted the direction in which the defendant was driving and immediately called 911.

Officers with the Gonzales Police Department located the defendant at a nearby apartment complex, and the victim identified him as the person who demanded money and the keys to his car at gunpoint. The defendant was placed under arrest, and he advised officers that he had thrown the gun out of the car

window. Although he directed officers to the general area where he had thrown the gun, they were unable to locate it.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant argues that he did not validly waive his constitutional right to a trial by jury.

The right to trial by jury in felony and certain misdemeanor cases is protected by both the federal and state constitutions. See U.S. Const. amend. VI; La. Const. art. I, §16 & §17(A). Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury, but no later than forty-five days prior to the trial date, and the waiver shall be irrevocable. La. Const. art. I, § 17A; La. C.Cr.P. art. 780.¹ A waiver of trial by jury is valid only if the defendant acted voluntarily and knowingly. See **State v. Kahey**, 436 So.2d 475, 486 (La. 1983). A waiver of this right is never presumed. **State v. Brooks**, 2001-1138 (La. App. 1st Cir. 3/28/02), 814 So.2d 72, 76, writ denied, 2002-1215 (La. 11/22/02), 829 So.2d 1037. Prior to accepting a waiver, the district court is not obligated to conduct a personal colloquy inquiring into the defendant's educational background, literacy, and work history. **State v. Allen**, 2005-1622 (La. App. 1st Cir. 3/29/06), 934 So.2d 146, 154. The Louisiana Supreme Court has specifically refused to adopt an absolute rule that a jury waiver cannot be made by the defendant's attorney when the defendant is considered to have understood his right and 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).

¹ Effective June 17, 2013, in accordance with the 2010 amendment of Louisiana Constitution article I, § 17(A), La. C.Cr.P. art. 780 was amended to require that waiver of the right to trial by jury be made by written motion filed in the district court no later than forty-five days prior to the date the case was set for trial. See 2013 La. Acts, No. 343, § 1. Language was also added to Article 780(B) requiring that both the defendant and his counsel (unless the defendant had waived his right to counsel) sign the motion to waive jury trial. In the instant case, the motion to waive jury trial was signed by defense counsel, but did not provide a line for the defendant's signature. For the reasons noted herein, *infra*, the error did not affect substantial rights of the defendant. See La. C.Cr.P. art. 921; see also **State v. Bell**, 2013-1443 (La. App. 3d Cir. 6/4/14), 140 So.3d 830, 832 (lack of written waiver was harmless error).

In the instant case, defendant's trial counsel filed a "Notice of Intent to Waive Trial by Jury" on October 17, 2013, stating that the defendant wished to waive his right to a trial by a jury of twelve and wished to be tried before the Honorable Alvin Turner. A hearing was held prior to trial, on November 19, 2013, on the defendant's motion. The defendant was present at this hearing, and the following colloquy occurred between his counsel and the court:

[Defense counsel]: It's a motion to waive trial by jury. [The defendant] communicated to me back in October --

[The court]: That's fine. If the time period is --

[Defense counsel]: Yes, judge. I filed it in October.

[The court]: All right. That's fine. Let the record so reflect that he's waiving his right to a trial by jury within the prerequisite time period.

The parties then began to discuss another motion. On February 28, 2014, the day of trial, the prosecutor stated that they were beginning a bench trial. The defendant was present and confirmed that his counsel had previously made him aware of all plea deals prior to that date, and that it was his choice to go to trial.

Although there is no colloquy between the district court judge and the defendant to highlight his understanding of the right to a jury trial and his knowing and voluntary waiver of this right, there is adequate evidence to demonstrate a valid jury trial waiver. The defendant's trial counsel filed a written motion waiving this right. Counsel confirmed the waiver in the defendant's presence at a motions hearing prior to trial. The court granted the motion without any objection by the defendant. Moreover, this was not the defendant's first criminal offense and, thus, he had prior experience as an accused in the trial of a criminal prosecution. See Phillips, 365 So.2d at 1309. Under these circumstances, we disagree with the defendant's claim that he did not validly waive his right to a trial by jury. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, the defendant argues that the district court erred when it sentenced him prior to ruling on his post-trial “Motion for Judgment of Acquittal.”

Under La. C.Cr.P. art. 821(A), a motion for postverdict judgment of acquittal must be made and disposed of before sentence. The defendant filed his motion on June 4, 2014. On June 6, 2014, the district court signed the motion and ordered the State to show cause on July 22, 2014, why the motion should not be granted. The defendant was sentenced on June 17, 2014. At the scheduled July show cause hearing, the matter was continued, and on September 16, 2014, the district court denied the defendant’s motion.

The defendant did not enter a contemporaneous objection to the district court’s failure to rule on the motion prior to sentencing. Therefore, his failure to enter such an objection precludes him from complaining of this error on appeal. See La. C.Cr.P. art. 841(A). In addition, the defendant has not cited any prejudice resulting from the court’s ruling on the motion prior to sentencing, nor have we found any indication that he was prejudiced. Thus, any error that occurred is not reversible. See State v. Lindsey, 583 So.2d 1200, 1205-06 (La. App. 1st Cir. 1991), writ denied, 590 So.2d 588 (La. 1992).

CONVICTION AND SENTENCE AFFIRMED.