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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-606

No. COA20-767

Filed 2 November 2021

Craven County, No. 18CRS051178

STATE OF NORTH CAROLINA

v.

HEATHER GABRIELLE FA FRENCH, Defendant.

Appeal by Defendant from judgment entered 6 July 2020 by Judge Joshua W. Willey, Jr., in Craven County Superior Court. Heard in the Court of Appeals 7 September 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Scott K. Beaver, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for the Defendant.*

DILLON, Judge.

¶ 1 Defendant Heather French appeals from a judgment convicting her of possession of five or more counterfeit instruments. Specifically, she argues that she was not properly advised when she chose to be tried without a jury.

I. Background

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¶ 2 Defendant was charged with possession of five or more counterfeit instruments after a deputy found her in possession of twenty-nine (29) counterfeit dollar bills during a traffic stop.

¶ 3 Defendant gave notice of intent to waive her right to a jury trial. The trial court commenced its colloquy with Defendant concerning her decision (errors in original):

THE COURT: Your attorney has indicated that you wish to waive your right to your constitutional right to trial by jury; is that correct?

MS. FRENCH: Yes.

THE COURT: You do have a right to trial by jury in this court guaranteed to you by the constitution. Our legislature has adopted a law which permits defendants for certain charges to give up that constitutional right and to have what's called a bench trial.

Let me tell you a little bit about the difference between those two types of trials. If you had jury trial we would have a number of your fellow citizens who would be summons to court. Twelve of them would be called to the jury box. The State would have a chance to question them. Your lawyer would have a chance to question them, and we they continue to go through that process until twelve were selected to hear your case.

At that point both the State and you would have the right to present evidence. The jury would be the ones who would find -- determine what the truth was. They would find what the facts are. I would instruct them as to what law they should apply to the facts and then they would reach a verdict and decide whether you were guilty or not guilty. If

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they find you guilty then I would sentence you.

The process with a bench trial is different, obviously we don't select a jury. With a bench trial the judge would decide what the truth is. He would decide what the facts are and would apply the same law that would be applied otherwise, and it would be up to the judge, not the jury, to determine whether the State had satisfied him beyond a reasonable doubt of your guilt.

So I mean the big difference is instead of needing to satisfy the twelve jurors, court would need to satisfy one. At the same time if it failed to satisfy this one it would be a not guilty verdict.

Do you understand the difference between the two types of trials?

MS. FRENCH: Yes.

THE COURT: With that understanding is it your intent to waive your right to trial by jury?

MS. FRENCH: Yes.

THE COURT: All right. We'll need to have her sign the -- it's an AOC has a form that you sign to waive your right to a jury trial.

¶ 4

Following this colloquy, Defendant signed the written waiver form, which the trial court accepted. Defendant was found guilty of possession of five or more counterfeit instruments at the conclusion of her bench trial. Defendant appealed to our Court.

## II. Analysis

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¶ 5 Defendant argues on appeal that the trial court violated her constitutional right to a jury trial by conducting a bench trial. We examine this argument under the statutory framework of N.C. Gen. Stat. § 15A-1201(d)(1) (2018), as Defendant’s constitutional argument is not preserved. *See State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982) (stating that constitutional questions not raised and passed upon at trial will not ordinarily be considered on appeal). We review *de novo* whether a trial court has violated a statutory mandate. *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985).

¶ 6 Criminal defendants may waive their right to a jury trial. *See* N.C. Const. art. I, §24; *see also* N.C. Gen. Stat. § 15A-1201. However, our General Statutes provide that “[b]efore consenting to a defendant’s waiver of the right to trial by jury, the trial judge shall . . . address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant’s decision to waive the right to trial by jury.” N.C. Gen. Stat. § 15A-1201(d)(1).

¶ 7 Our Court has stated that N.C. Gen. Stat. § 15A-1201(d)(1) does not establish “a script for the colloquy that should occur between a superior court judge and a defendant seeking to exercise his right to waive a jury trial.” *State v. Rutledge*, 267 N.C. App. 91, 97, 832 S.E.2d 745, 748 (2019). In *Rutledge*, the trial court’s colloquy included informing the defendant that “the judge alone would decide guilt or innocence and the judge alone would determine any aggravating factors that may be

present.” *Id.* at 98, 832 S.E.2d at 748. The trial court also informed the defendant of the maximum possible sentence that could be imposed for his non-capital offense. *Id.* at 98, 832 S.E.2d at 749.

¶ 8

Here, Defendant argues that the trial court failed to include several essential components of the *Rutledge* colloquy, specifically: (1) the class of her felony, (2) the maximum possible punishment for her crime, and (3) the requirement that a jury verdict be unanimous. The alleged failure to include these instructions, according to Defendant, resulted in her failing to understand and appreciate the consequences of waiving the right to a jury trial as required by N.C. Gen. Stat. § 15A-1201(d)(1). Defendant misunderstands the key conclusion of *Rutledge*: that our Court will not require a trial court to ask a particular set of questions to satisfy N.C. Gen. Stat. § 15A-1201(d)(1). *See Rutledge*, 267 N.C. App. at 97, 832 S.E.2d at 748.

¶ 9

In this case, the trial court personally addressed Defendant to explain the differences between a bench trial and a jury trial. Defendant was informed that in a bench trial the judge would be the sole factfinder, whereas a jury consists of twelve (12) fellow citizens who must *all* be “satisf[ied.]”<sup>1</sup> When asked if she understood the differences between the two types of trials and if she wished to waive her right to a

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<sup>1</sup> While the trial court did not use the specific word “unanimous,” we note that Defendant’s contention that she was not informed of the requirement of a unanimous jury was addressed in the colloquy.

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jury trial, Defendant answered, “Yes.” The trial court’s colloquy established that Defendant fully understood and appreciated the consequences of her decision to waive the right to trial by jury. *See* N.C. Gen. Stat. § 15A-1201(d)(1). Therefore, we affirm the trial court’s judgment.

III. Conclusion

¶ 10

Defendant received a fair trial, free from reversible error.

**AFFIRMED.**

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).