

[Cite as *Cleveland Hts. v. Jackson*, 2003-Ohio-6486.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 82958

CITY OF CLEVELAND HEIGHTS, : ACCELERATED DOCKET
Plaintiff-Appellee : JOURNAL ENTRY
vs. : AND
EMMITT K. JACKSON, : OPINION
Defendant-Appellant :
:
DATE OF ANNOUNCEMENT : DECEMBER 4, 2003
OF DECISION :
:
CHARACTER OF PROCEEDING : Criminal appeal from
Cleveland Heights
Municipal
Court
Case No. CRB 0200388
JUDGMENT : AFFIRMED
DATE OF JOURNALIZATION :

APPEARANCES:

For Plaintiff-Appellee: KIM T. SEGEBRATH
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City of Cleveland Heights
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For Defendant-Appellant: STEPHEN L. MILES
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ANNE L. KILBANE, P.J.

{¶1} This is an appeal by Emmitt Jackson from a verdict, following a bench trial before Cleveland Heights Municipal Court Judge A. Deane Buchanan, finding him guilty of menacing¹. He claims the judge lacked jurisdiction because his jury waiver was not made knowingly, intelligently, or voluntarily. We affirm.

{¶2} From the record we glean the following: While checking out his purchases at the Home Depot, Jackson took offense from the conduct of the assistant store manager and, apparently, raised his voice, backed the manager into a stack of pallets and threatened him. A complaint was filed and an arrest warrant issued. When Jackson appeared in court he signed an affidavit of indigency, a speedy trial waiver, and a statement of rights that advised him, among others, that he had the right to a jury trial in serious offenses, but had to make a written request for a jury for a petty

¹R.C. 2903.22(A), a 4th degree misdemeanor.

offense. An attorney was appointed to represent him, no jury demand was made, and the matter was tried to the judge. Jackson was found guilty, fined \$250 with \$200 suspended, sentenced to thirty days in jail with twenty-seven days suspended, ordered to pay costs, and placed on one year inactive probation.²

{¶3} Jackson's sole assignment of error, set forth in Appendix A, challenges the validity of a jury waiver. R.C. 1901.24 provides:

"(A) A jury trial in a municipal court shall be demanded in the manner prescribed in the Rules of Civil Procedure or the Rules of Criminal Procedure.

(B) The right of a person to a jury trial in a municipal court is waived under the circumstances prescribed in the Rules of Civil Procedure or the Rules of Criminal Procedure."

Menacing is a petty offense, as defined by Crim.R. 2:

"* * *

(C) 'Serious offense' means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.

(D) 'Petty offense' means a misdemeanor other than a serious offense."

²May 12, 2003.

{¶4} In *State v. Fish*³, the court outlined the differences between a serious offense versus a petty offense as it applies to a jury trial, holding:

"In a 'serious' offense case, the right to a jury is automatic, requiring no act by the defendant to demand it, and requiring an affirmative written document to waive it. However, where, as here, the charge involved is a 'petty' offense (one with a penalty of six months' incarceration or less), a defendant must file a written jury demand to [*239] avoid a waiver under Crim.R. 23(A)."

{¶5} Crim. R. 23(A) states in relevant part:

"In petty offense cases, where there is a right of a jury trial, the defendant shall be tried by the court unless he demands a jury trial. Such a demand must be made in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later."

{¶6} The record reflects that, although represented by a lawyer, Jackson failed to file a written request for a jury trial at any time during the proceedings.

{¶7} Jackson, however, contends that, under R.C. 2945.05, he was entitled to a jury trial and, unless he waived it in writing in open court, which he did not, the verdict must be set aside. While

³(1995), 104 Ohio App.3d 236, 661 N.E.2d 788.

we agree that a conviction for menacing can result in incarceration, and a defendant's right to be tried before a jury is guaranteed by the Ohio Constitution and statute:⁴

"[t]he guarantee of a jury trial in criminal cases * is not an absolute and unrestricted right in Ohio with respect to misdemeanors, and a statute, ordinance, or authorized rule of court may validly condition the right to a jury trial in such a case on a written demand therefore ***."**⁵

{¶8} Had a written jury demand been made, only a written waiver, knowingly, voluntarily and intelligently made, would have permitted the judge to determine the verdict. Since Jackson failed to exercise his right to a trial by jury, it was waived.⁶ This assignment of error lacks merit.

{¶9} The judgment is affirmed.

Judgment affirmed.

APPENDIX A: APPELLANT'S ASSIGNMENT OF ERROR

⁴Sec. 10, Art. I and R.C. 2945.17.

⁵*Mentor v. Giordano* (1967), 9 Ohio St.2d 140, 224 N.E.2d 343 syllabus 1.

⁶*Id.*; *Beachwood v. Russell* (Dec. 16, 1993), Cuyahoga App. No. 64291.

"I. THE TRIAL COURT WAS WITHOUT JURISDICTION TO CONDUCT A BENCH TRIAL BECAUSE THE APPELLANT'S JURY WAIVER WAS NOT MADE KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY, NOR WAS IT MADE IN OPEN COURT."

It is ordered that appellee recover of 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 Cleveland Heights Municipal Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES D. SWEENEY*, J., And

SEAN C. GALLAGHER, J., Concur

ANNE L. KILBANE
PRESIDING JUDGE

(*Sitting by assignment: Judge James D. Sweeney, Retired, of the Eighth District Court of Appeals.)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).