IN THE
TENTH COURT OF APPEALS

No. 10-18-00366-CR

LONNIE GENE RAGAN,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 82nd District Court
Robertson County, Texas
Trial Court No. 17-11-20565-CR

OPINION

Lonnie Gene Ragan was convicted of Assault Causing Bodily Injury-Family Member/Impeding Breath or Circulation, TEX. PENAL CODE § 22.01(a)(1), (b)(2)(B), and sentenced to 15 years in prison. In his sole issue, Ragan contends his waiver of his right to a jury trial did not meet constitutional requirements, in that, although he may have voluntarily waived his right to a jury trial by signing a written waiver, the record did not show he *knowingly* and *intelligently* waived that right. Because the waiver met

constitutional requirements, the trial court's judgment is affirmed.

"A defendant has an absolute right to a jury trial." *Hobbs v. State*, 298 S.W.3d 193, 197 (Tex. Crim. App. 2009); *see* U.S. CONST. amend. VI; TEX. CONST. art. I, § 15. A defendant also has the right to waive his right to trial by jury. *See Adams v. United States*, 317 U.S. 269, 275, 63 S. Ct. 236, 87 L. Ed. 268 (1942). In Texas, "the waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the state." TEX. CODE CRIM. PROC. art. 1.13(a). Further, a written jury waiver that complies with article 1.13 of the Texas Code of Criminal Procedure is sufficient to show that a defendant intelligently waived his right to a jury trial. *See Holcomb v. State*, 696 S.W.2d 190, 195 (Tex. App.—Houston [1st Dist.] 1985), *aff'd as reformed*, 745 S.W.2d 903 (Tex. Crim. App. 1988) (en banc). As a matter of federal constitutional law, however, the State must establish, on the record, a defendant's express, knowing, and intelligent waiver of jury trial. *Hobbs*, 298 S.W.3d at 197; *Guillett v. State*, 677 S.W.2d 46, 49 (Tex. Crim. App. 1984). A waiver of a jury trial is not to be presumed from a silent record. *See Guillett*, 677 S.W.2d at 49.

Questions involving legal principles, such as waiving the right to a jury trial, and the application of that law to the established facts are properly reviewed *de novo*. *See Kothe v. State*, 152 S.W.3d 54, 62-63 (Tex. Crim. App. 2004); *Jackson v. State*, Nos. 05-14-00274-CR, 05-14-00275-CR, 2015 Tex. App. LEXIS 6126, at *12 (Tex. App.—Dallas June 17, 2015, no pet.) (not designated for publication) (waiver of jury trial). *See also Maestas*

v. State, 987 S.W.2d 59, 62 (Tex. Crim. App. 1999) (whether police honored right to remain silent—*de novo* review); *United States v. Perez*, 356 F. App'x 770, 772 (5th Cir. 2009) (per curiam) (not designated for publication) ("Given the fundamental nature of the right at issue [the right to a trial by jury], and given a jury trial's central place in our criminal justice system, we apply de novo review to Perez's claim [that there was no oral or written waiver of the right to jury trial].").

Ragan contends the trial court was simply a spectator in the waiver process and needed to do more so that the record could sufficiently establish an express, knowing, and intelligent waiver by Ragan. We disagree with Ragan's contention.

Initially, the trial court explained on the record that during voir dire, Ragan's counsel approached the bench and revealed to the court that Ragan, through a handwritten note to counsel, indicated he wanted to waive a jury and go to the judge "for the actual trial, and if needed, punishment." Counsel confirmed the trial court's summary and informed the court that once the jury recessed, he spoke with Ragan. Next, counsel confirmed on the record with Ragan that Ragan wanted "all of these people to go home[.]" Counsel then explained to Ragan, again on the record, the following:

> You do have the right to a jury trial. The Judge will hear all the evidence. We're going to still enter a plea of not guilty, and the Judge will hear all the evidence. The Judge will make a determination as to whether or not you're guilty, and if he does find you guilty, then he would assess your punishment. Do you understand that? Is that what you want to do?

Ragan replied, "Yes, sir. Yes, sir."

After counsel and the State began talking over each other, the trial court asked everyone to start again, one at a time. Consequently, counsel again explained to Ragan, on the record and before the trial court:

> If you want to give up your right to a trial by jury, the Judge will listen to all the evidence. He will determine whether or not he believes you are guilty beyond a reasonable doubt. If he finds you "not guilty," then it's over for this case. If he finds you guilty, then he will assess your punishment somewhere within two years to 20 years. Is that what you want to do?

Ragan replied, "Yes, sir."

The trial court then asked Ragan whether his decision was made after consulting with counsel and whether he waived the right to a jury trial freely and voluntarily "here today." Ragan replied affirmatively. When further questioned by the court whether Ragan was under the influence of any type of medication or any foreign substance, Ragan responded, "No." After asking Ragan if he had any questions, which Ragan did not, the trial court again confirmed with Ragan that Ragan wanted to waive his right to a jury trial.

Ragan does not contest the statutory validity of the jury trial waiver he signed which can be found in the record and which, he concedes, renders his waiver at least voluntary. Rather, his only complaint is that the trial judge did not engage in a specific "colloquy" used by some federal and state courts and the BENCH BOOK FOR UNITED STATES DISTRICT COURT JUDGES which, his argument continues, would ensure the jury

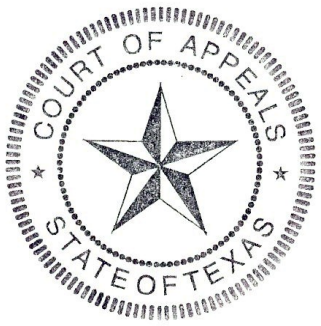
trial waiver was also intelligent and knowing. We decline to follow those courts and the federal bench book.[1]

The waiver signed by Ragan complied with article 1.13 of the Texas Code of Criminal Procedure. Ragan admitted this waiver was voluntary, and according to caselaw, compliance with article 1.13 is sufficient to show the waiver was intelligently made as well. Further, after a review of the discussion between the trial court, Ragan's counsel, Ragan, and the State, the record established Ragan's express, knowing, and intelligent waiver of his right to a jury trial.

Accordingly, the trial court had authority to proceed with a bench trial because Ragan waived his right to a jury trial, and Ragan's sole issue is overruled.

Having overruled the only issue raised on appeal, we affirm the trial court's judgment.

TOM GRAY
Chief Justice



Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed August 21, 2020
Publish
[CR25]

[1] Further, the 5th Circuit has stated that "the better practice" would be for district courts to engage in a particular colloquy, but noted that "'better practice' implies a preference, not a requirement, and thus cannot be said to constitute a constitutional minimum." *Scott v. Cain*, 364 F. App'x 850, 855 (5th Cir. 2010) (per curiam) (not designated for publication).