

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH MARK MEDLIN,

Defendant-Appellant.

UNPUBLISHED

July 19, 2012

No. 304402

Lake Circuit Court

LC No. 11-004878-FH

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

The trial court convicted defendant Kenneth Mark Medlin of first-degree home invasion in violation of MCL 750.110a(2) following a bench trial. Defendant's only complaint on appeal is that the trial court failed to adequately determine whether he knowingly and voluntarily waived his right to a jury trial. We agree with defendant that the trial court should have engaged in a more thoughtful and in-depth interview with him on the record. Yet, the trial court complied with MCR 6.402 and was not required to inform defendant of the benefits of a jury, over a bench, trial. We therefore affirm.

I. BACKGROUND

In the early morning hours of February 28, 2011, defendant entered an unlocked home in Luther, Michigan. Defendant was under the influence of heroin and methamphetamine, had not slept in nearly a week, and claimed that he became lost and disoriented while walking to his mother's house. Defendant rummaged through a desk and grabbed a digital camera and X-Box video game console. Before defendant could leave with these items, the homeowner returned. Defendant apologized, claimed mistaken identity, and begged for a pair of socks to keep his feet warm. Officers arrested defendant shortly thereafter in a nearby wooded area.

Before trial, defendant waived his right to a jury on the record:

THE COURT: All right. Now, just a couple of procedural matters: I note from my docket this was scheduled for a bench trial; however, I need to advise both parties, both the People of the State of Michigan and the defendant, under the United States Constitution and also the constitution of the State of Michigan, are entitled to a jury trial in this type of proceedings. They're also entitled to waive that right to that jury trial and have a bench trial, or a trial just in front of the

judge, but both parties need to - - to make that waiver if that's what they wish to do and that's the decision they wish to make.

So, so I guess first I would address my questions to the prosecutor. Mr. Cooper, on behalf of the People of the State of Michigan, do you wish to waive your right - - or, the People's right to a jury trial and just have a bench trial today?

MR. COOPER [Prosecutor]: Yes, we do, Your Honor.

THE COURT: Okay.

MR. COOPER: A bench trial is fine.

THE COURT: All right.

Miss Frisbie [defense counsel], I guess I would turn to you, then. Is that what your client wishes to do also, then?

MS. FRISBIE: Yes, sir.

THE COURT: All right.

And, Mr. Medlin, you kind of heard me describe those rights. Do you wish to waive your right to a jury trial and - - and just have a bench trial in this matter?

THE DEFENDANT: Yes, sir.

THE COURT. All right. Well, based on that, then, I believe we can go forward.

The court then proceeded to conduct the trial and convicted defendant as charged.

II. ANALYSIS

Both the United States and the Michigan Constitutions guarantee a defendant the right to a jury trial. US Const, Am VI; Const 1963, art 1, § 20. With the consent of the prosecutor and the approval of the court, a criminal defendant may elect to waive that right. MCR 6.401; *People v Cook*, 285 Mich App 420, 422; 776 NW2d 164 (2009). The procedure for a trial court to approve a criminal defendant's waiver of the right to a jury trial is governed by MCR 6.402, which provides:

(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has been arraigned or has waived an arraignment on the information, or, in a court where arraignment on the information has been eliminated under MCR 6.113(E), after the defendant has otherwise been provided with a copy of the information, and has been offered an opportunity to consult with a lawyer.

(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

“By complying with the requirements of MCR 6.402(B), a trial court ensures that a defendant’s waiver is knowing and voluntary.” *Cook*, 285 Mich App at 422, citing *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003).

The trial court advised defendant in open court that he had a constitutional right to a jury trial. The court addressed defendant personally, asking him if he wished to waive his right. Defendant answered in the affirmative. The court made a verbatim record of the proceeding. Defendant does not dispute these elements. Rather, defendant contends that this colloquy was insufficient for the court to “ascertain” that he understood his jury trial right and voluntarily waived it.

“The adequacy of a jury trial waiver is a mixed question of fact and law.” *Cook*, 285 Mich App at 422. In *People v Pasley*, 419 Mich 297, 302; 353 NW2d 440 (1984), the case on which MCR 6.402 was modeled, the Supreme Court held that, in order to comply with a now-superseded statute’s demand that a waiver be made in open court,

we will require that the record of a trial show that the trial court has made a finding of fact on the record based upon information conveyed to the judge in open court by the defendant, or in his presence, that the defendant has personally, voluntarily, and understandingly given up his right to trial by jury

The court’s conclusion that the defendant’s waiver was personal, voluntary, and understanding must be supported by “sufficient” evidence. *Id.* at 303.

There is no formulaic inquiry, however, a trial court must make to ensure the voluntariness of a defendant’s waiver of the jury trial right. The court is not required to explain to the defendant that the 12-member jury would have to reach a unanimous decision to convict. *People v Leonard*, 224 Mich App 569, 596; 569 NW2d 663 (1997), citing *People v James (After Rem)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992). The Court of Appeals for the Sixth Circuit has “implore[d]” lower courts, before accepting a jury trial waiver, to inform the defendant

that a jury is composed of 12 members of the community, he may participate in the selection of jurors, the verdict of the jury must be unanimous, and that a judge alone will decide guilt or innocence should he waive his jury trial right. [*United States v Martin*, 704 F2d 267, 274-275 (CA 6, 1983).]

Although such a colloquy would greatly assist the court’s decision, it is not constitutionally required. *Id.* at 274.

We do not condone the trial court's abbreviated approach to complying with MCR 6.402. The court did the absolute minimum required by generally referencing defendant's constitutional right and asking defendant directly if he wished to waive that right. Defendant does not claim that he was actually unwilling or coerced into proceeding with a bench trial. "[T]he record does not disclose any evidence that [defendant] was so unaware of the rudimentary elements of trial by jury that his waiver cannot stand." *Sowell v Bradshaw*, 372 F3d 821, 832 (CA 6, 2004). In fact, defendant was a fourth habitual offender with significant prior experience with the criminal justice system. Ultimately, the court complied with the minimum procedural requirements to protect defendant's constitutional right to a jury trial.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Jane M. Beckering

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SAAD, J. (*concurring*).

I concur in result only.

/s/ Henry William Saad