

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEY FOR APPELLANT

Timothy J. O'Connor  
O'Connor & Auersch  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Catherine E. Brizzi  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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William Hedrick,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 25, 2022

Court of Appeals Case No.  
21A-CR-2127

Appeal from the Marion Superior  
Court

The Honorable Christina R.  
Klineman, Judge

Trial Court Cause No.  
49D17-2012-F6-36288

**Najam, Judge.**

## Statement of the Case

- [1] William Hedrick appeals his convictions for three counts of intimidation, as Level 6 felonies, and two counts of invasion of privacy, as Class A misdemeanors. Hedrick raises one issue for our review, which we restate as whether Hedrick personally waived his right to a jury trial.
- [2] We reverse and remand with instructions.

## Facts and Procedural History

- [3] Hedrick and Kristie Bricker-Ralph were, at one time, romantically involved, and they are the parents of a twelve-year-old child. They ended their romantic relationship shortly after their child was born, and their ongoing relationship has been strained. Bricker-Ralph has since married.
- [4] On November 5, 2020, Hedrick sent several threatening text messages to Bricker-Ralph's husband. The following day, the Johnson Superior Court issued a protective order (under a separate criminal case that had been filed against Hedrick) that directed Hedrick to have no contact with Bricker-Ralph and her husband. However, on November 25 and, again, on December 2, Hedrick sent several text messages to Bricker-Ralph that contained vulgar language and expletives and that threatened violence against Bricker-Ralph and her husband. As a result, on December 4, the State charged Hedrick in Marion

County with three counts of intimidation, as Level 6 felonies, and two counts of invasion of privacy, as Class A misdemeanors.<sup>1</sup>

- [5] Hedrick’s initial hearing took place on December 21, and Hedrick appeared with his attorney, Joshua Stein. Stein told the trial court that Hedrick had another criminal case pending in Johnson County. Counsel asked the court to set the instant case for a pretrial conference, which the court then set for February 22, 2021. Stein withdrew from Hedrick’s case in January.
- [6] On February 12, Hedrick filed a letter with the court stating that he was being held without bond in the Johnson County Jail and that the facility would not allow him to attend the pretrial conference scheduled for February 22. The court reset the matter for March 22. However, Hedrick did not appear for the March hearing because he was still in the Johnson County Jail. The court set a status of counsel hearing for April 20.
- [7] Hedrick appeared at the April hearing and told the court that he was seeking new counsel. The court did not want to delay the case, so it appointed a public defender to represent Hedrick and advised Hedrick that he could retain counsel later if he desired. The court then set an “attorneys only conference” for May 18. Tr. Vol. 2 at 15. At the May hearing, Hedrick’s counsel told the court that Hedrick was still in the Johnson County Jail and that counsel had not had a

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<sup>1</sup> The State later filed two additional counts against Hedrick, which sought to enhance the invasion of privacy counts to Level 6 felonies. However, the State dismissed the additional counts at Hedrick’s bench trial.

chance to contact Hedrick. The court ultimately reset the matter for June 29, as Hedrick remained in the Johnson County Jail.

[8] Hedrick was not present at the June 29 hearing, and the public defender informed the court that Hedrick was still in the Johnson County Jail. The court asked counsel, “What’s going on with this case, do you know?” *Id.* at 27. Counsel replied, “[W]e’d like to move this [case] to bench trial.” *Id.* The State agreed, and the court set a bench trial for August 3.

[9] Hedrick was present for the bench trial, following which Hedrick was found guilty as charged. The court sentenced him to a suspended sentence of two years for each of the three intimidation counts and to one year for each of the invasion of privacy counts, with all counts to run concurrently.<sup>2</sup> This appeal ensued.

## **Discussion and Decision**

[10] Hedrick contends that he did not personally waive his right to a jury trial and that his convictions must therefore be vacated and his case remanded for a jury trial on all five counts on which he was convicted. The State concedes that Hedrick did not personally waive his right to a jury trial and states that “[t]he record does not show that Hedrick knowingly, voluntarily, and intelligently

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<sup>2</sup> Hedrick filed a motion to correct error on August 16, 2021, and contended, among other things, that the trial court erroneously indicated in its sentencing order that two of Hedrick’s invasion of privacy convictions were felonies. The court granted Hedrick’s motion in part and corrected its sentencing order to show that the two convictions for invasion of privacy were misdemeanors.

waived his right to a jury trial.” Appellee’s Br. at 6. Thus, the State acknowledges that this Court should “remand the case to the trial court” as to the felony convictions. *Id.* We must agree.

[11] “The jury trial right is a bedrock of our criminal justice system, guaranteed by both Article I, Section 13 of the Indiana Constitution and the Sixth Amendment to the United States Constitution.” *Horton v. State*, 51 N.E.3d 1154, 1158 (Ind. 2016). Under Indiana constitutional jurisprudence, “in a felony prosecution, waiver [of the jury trial right] is valid only if communicated *personally* by the defendant[.]” *Id.* (emphasis original). Personal waiver of the right to a jury trial may be either in writing or in open court. *Id.* at 1159. Indiana has rejected the purported waiver of a right to a jury trial where such waiver is communicated solely by a defendant’s counsel. *Id.* at 1158-59 (citing, *inter alia*, *Kellems v. State*, 849 N.E.2d 1110, 1113-14 (Ind. 2006); *Good v. State*, 267 Ind. 29, 366 N.E.2d 1169 (1977)). In other words,

[a] defendant is presumed not to waive his jury trial right unless he affirmatively acts to do so. It is fundamental error to deny a defendant a jury trial unless there is evidence of a knowing, voluntary, and intelligent waiver of the right. The defendant must express his personal desire to waive a jury trial and such a personal desire must be apparent from the court’s record, whether in the form of a written waiver or a colloquy in open court . . . .

*Pryor v. State*, 949 N.E.2d 366, 371 (Ind. Ct. App. 2011) (internal citations and quotations omitted). And the failure to confirm a defendant’s personal waiver

before proceeding to bench trial constitutes fundamental error. *Horton*, 51 N.E.3d at 1160.

[12] In *Horton*, the State charged the defendant with Class A misdemeanor domestic battery, which it sought to elevate to a Class D felony based on Horton’s prior domestic-battery conviction. The trial was bifurcated. After Horton was found guilty of Class A misdemeanor domestic battery, and while the jurors were still seated in the box, the trial court asked defense counsel how counsel intended to proceed on the Class D felony enhancement. Counsel responded, “as a bench trial.” *Id.* at 1156. Our Supreme Court held that, without Horton’s personal waiver of the jury trial right, “failure to confirm Horton’s personal waiver before proceeding to bench trial was fundamental error[,]” and this was so even where the circumstances appeared to “imply waiver was the defendant’s choice.” *Id.* at 1159-60. Similarly, in *Kellems*, our Supreme Court held that even where Kellems had been advised of his right to a jury trial and his option to waive that right—and had subsequently responded that he did not have any questions regarding his rights—counsel’s communication of waiver was not enough. 849 N.E.2d at 1113-14. Simply put, absent questioning of the defendant or a signed writing indicating intent to waive a jury trial, no waiver may be deemed to have occurred. *See id.*

[13] Here, at an attorney conference at which Hedrick did not appear, Hedrick’s counsel informed the court that “we’d like to move this [case] to bench trial.” *Tr. Vol. 2* at 27. The State agreed, and the court set the matter for a bench trial. However, Hedrick did not *personally* express a desire to waive his right to a jury

trial. Therefore, the waiver by Hedrick’s counsel was invalid, and the court’s failure to confirm Hedrick’s personal waiver before proceeding to a bench trial was fundamental error. *See Anderson v. State*, 833 N.E.2d 119, 122 (Ind. Ct. App. 2005) (holding waiver invalid where defendant neither signed written waiver nor expressed personal desire to waive right to jury trial in open court); *see also Horton*, 51 N.E.3d at 1160.

[14] As noted above, the State concedes that Hedrick did not waive his right to a jury trial on his felony charges but contends that no error occurred regarding the waiver of Hedrick’s right to a jury trial on his misdemeanor counts. The State invites this Court to find that Hedrick’s challenge on appeal to the validity of his “personal waiver *only implicates his felony convictions [for intimidation]*” and not his misdemeanor convictions for invasion of privacy. Appellee’s Br. at 7 (emphasis added). However, we decline the State’s invitation.

[15] While a defendant charged with a felony has an automatic right to a jury trial and “is presumed not to waive this right unless he affirmatively acts to do so[,]” by contrast, a defendant charged with a misdemeanor must demand a jury trial and may waive that right by inaction. *Dadouch v. State*, 126 N.E.3d 802, 804 (Ind. 2019) (citing *Poore v. State*, 681 N.E.2d 204, 207 (Ind. 1997)). The procedure for demanding a jury trial in a misdemeanor case is controlled by Indiana Criminal Procedure Rule 22 and provides:

A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor not later than ten (10) days before his first scheduled trial date. The failure of a

defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

The trial court shall not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the state and defendant, which agreement shall be filed with the court and made a part of the record. If such agreement is filed, then the trial court may, in its discretion, grant a trial by jury.

[16] As our Supreme Court explained in *Dadouch*,

In a misdemeanor case, a defendant waives the right to a jury trial when the record does not contain a timely request for a jury trial and establishes that the defendant: (1) was advised of the right to a jury trial; (2) had at least fifteen days advance notice of the trial date; (3) was advised of the need to file a written demand for a jury trial at least ten days before the first scheduled trial date and that failure to do so will result in waiver of the right; and (4) understood the advisements.

126 N.E.3d at 804. And, as this Court has observed, “[t]he right to trial by jury is a fundamental right, and while the manner of preserving that right [in a misdemeanor case] is altered by [Rule] 22, it is not diminished.” *Duncan v. State*, 975 N.E.2d 838, 842 (Ind. Ct. App. 2012). In other words, a waiver by inaction—absent confirmation that a defendant has been advised of, and understands, his right to a jury trial and the consequences of his failure to timely demand a trial by jury—does not satisfy the constitutional requirement



that the defendant can waive his jury trial right *only* through a personal, knowing, intelligent, and voluntary waiver. Here, Hedrick was not given a Rule 22 advisement.

[17] The record is clear that Hedrick was not advised by the trial court—at his initial hearing or any other pretrial hearing—of his right to a trial by jury for either the felony or the misdemeanor counts. Hedrick’s counsel purported to waive Hedrick’s jury trial right for both his felonies and his misdemeanors. That waiver was invalid. Thus, Hedrick’s convictions must be reversed.

### **Conclusion**

[18] We hold that Hedrick neither waived his right to trial by jury on the felonies nor failed to file a written demand for a jury trial on the misdemeanors and that the trial court erred by conducting a bench trial. We reverse Hedrick’s convictions for intimidation and invasion of privacy and remand with instructions for proceedings not inconsistent with this opinion.

[19] Reversed and remanded with instructions.

Vaidik, J., and Weissmann, J., concur.