

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1311

Appellee

Trial Court No. CR0200902279

v.

Louis A. Evangelista

**DECISION AND JUDGMENT**

Appellant

Decided: August 5, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

Eric Allen Marks, for appellant.

\* \* \* \* \*

YARBROUGH, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas following a bench trial finding appellant Louis Evangelista guilty of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(a), a felony of the fifth degree. We affirm.

{¶ 2} On June 30, 2009, a grand jury indicted Evangelista on one count of possession of cocaine. Evangelista pleaded not guilty, and the matter ultimately was set for a bench trial on October 20, 2009.

{¶ 3} On the day of the trial, the proceedings commenced at 9:24 a.m. The transcript indicates that prior to opening statements, the trial court engaged in a thorough colloquy with Evangelista concerning his right to a jury trial, and his desire to have a bench trial. Following Evangelista's knowing, intelligent, and voluntary waiver of a jury trial, the trial then began to the bench and the court found him guilty on the sole count of possession. The proceedings concluded at 10:36 a.m. Shortly thereafter, at 11:04 a.m. that same day, Evangelista's signed, written waiver of his right to a jury trial was filed and journalized with the trial court.

{¶ 4} On November 28, 2009, the trial court sentenced Evangelista to a two-year term of community control. Evangelista timely filed his notice of appeal and now raises the following sole assignment of error:

{¶ 5} "THE TRIAL COURT LACKED JURISDICTION TO CONDUCT A BENCH TRIAL."

{¶ 6} Evangelista argues that the timing of the events relating to his waiver of the right to a jury trial did not strictly comply with R.C. 2945.05, and therefore the trial court lacked jurisdiction to conduct the bench trial.

{¶ 7} R.C. 2945.05 provides in relevant part, "In all criminal cases pending in courts of record in this state, the defendant may waive a trial by jury and be tried by the

court without a jury. Such waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof." "Absent strict compliance with the requirements of R.C. 2945.05, a trial court lacks jurisdiction to try the defendant without a jury." *State v. Pless* (1996), 74 Ohio St.3d 333, 339.

{¶ 8} Here, Evangelista concedes that he signed a written waiver, and that it was filed and made a part of the record after the trial concluded. In a similar situation in *State v. Brown*, 6th Dist. No. WD-09-058, 2010-Ohio-1698, ¶ 87-90, we held that filing the waiver after the trial was not fatal to strict compliance with R.C. 2945.05, and thus the court had jurisdiction to proceed with a bench trial. See, also, *State v. Sekera*, 8th Dist. No. 80690, 2002-Ohio-5972; *State v. McKinney*, 8th Dist. No. 80991, 2002-Ohio-7249.

{¶ 9} However, in addition to the waiver not being filed until after the trial, Evangelista asserts in his brief that he did not sign the waiver until after the trial. Thus, Evangelista argues that his failure to sign the waiver before trial does not strictly comply with R.C. 2945.05, and consequently the trial court did not have jurisdiction to proceed with a bench trial.

{¶ 10} We do not need to reach Evangelista's argument because, despite his assertion, the transcript does not indicate that the waiver was not signed until after the trial. Notably, the transcript only addresses the jury waiver in two places. The first is an exchange concerning Evangelista's right to a jury trial and his right to waive that jury trial:

{¶ 11} "THE COURT: \* \* \* Prior to opening statements, Mr. Tomczak<sup>1</sup>, is there anything else?

{¶ 12} "MR. TOMCZAK: No, I think we need a waiver.

{¶ 13} "THE COURT: Thank you. Anything from the State?

{¶ 14} "MS. DONOVAN: No, Your Honor.

{¶ 15} "THE COURT: [Describing to Evangelista his right to a jury trial and his right to waive that trial and have the Bench decide the case.] Do you understand all of that?

{¶ 16} "THE DEFENDANT: Yes, sir.

{¶ 17} "THE COURT: Do you have any questions about anything about a jury trial itself or the Bench trial or anything? Do you have any questions?

{¶ 18} "THE DEFENDANT: Yes, sir, I'm fine.

{¶ 19} "THE COURT: You're fine. All right. You are knowingly, intelligently, and voluntarily waiving your right to a jury trial and asking for a Bench trial instead?

{¶ 20} "THE DEFENDANT: Yes, Your Honor.

{¶ 21} "THE COURT: Okay. All right. \* \* \*

{¶ 22} The second is an exchange that took place at the close of proceedings:

{¶ 23} "THE COURT: All right. Thank you.

---

<sup>1</sup>Mr. Tomczak was Evangelista's trial counsel.

{¶ 24} "I have a waiver signed by Mr. Evangelista waiving his right to trial and asking the case be tried by a Judge and it has your signature Mr. Tomczak as well as Mr. Evangelista; is that correct?

{¶ 25} "MR. TOMCZAK: Yes, Your Honor.

{¶ 26} "THE COURT: All right. Thank you."

{¶ 27} Citing to the second exchange, Evangelista declares that, "the waiver was signed at the conclusion of the trial, or 10:36 A.M. on October 20, 2009." To the contrary, we think that the second exchange more likely indicates that the court was confirming its possession of the already signed waiver. Moreover, since Evangelista has presented nothing that would undermine "the presumption of regularity accorded all judicial proceedings," *State v. Sweet* (1995), 72 Ohio St.3d 375, 376, we presume that the trial court properly had Evangelista sign the waiver prior to the commencement of the trial.

{¶ 28} Accordingly, we hold that the trial court strictly complied with R.C. 2945.05; Evangelista's assignment of error is not well-taken.

{¶ 29} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, P.J.

\_\_\_\_\_  
JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
---