

[Cite as *State v. Taylor-Gibson*, 2009-Ohio-4218.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 09AP-177
Plaintiff-Appellee,	:	(M.C. No. 08 CR B 003914)
v.	:	
	:	(REGULAR CALENDAR)
Virginia Taylor-Gibson,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on August 20, 2009

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*Richard C. Pfeiffer, Jr.*, City Attorney, *Lara N. Baker* and *Melanie R. Tobias*, for appellee.

*Yeura R. Venters*, Public Defender, and *John W. Keeling*, for appellant.

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APPEAL from the Franklin County Municipal Court.

CONNOR, J.

{¶1} Defendant-appellant, Virginia Taylor-Gibson ("appellant"), appeals from a judgment of the Franklin County Municipal Court, finding her guilty of disorderly conduct and assault. For the reasons that follow, we reverse that judgment and remand the matter for further proceedings.

{¶2} Appellant was charged with disorderly conduct, a fourth-degree misdemeanor and a violation of Columbus City Codes 2317.11(A)(1), and with assault, a

first-degree misdemeanor and a violation of R.C. 2903.13(A). On November 26, 2008, appellant filed a demand for a jury trial.

{¶3} On January 27, 2009, this matter was tried to the court. The State of Ohio presented the testimony of two witnesses. Appellant testified on her own behalf, claiming she acted in self-defense. The court found appellant guilty of both disorderly conduct and assault. She was sentenced to 30 days incarceration with 28 days suspended and one year of non-reporting probation.

{¶4} On appeal, appellant asserts a single assignment of error for our review:

THE TRIAL COURT LACKED JURISDICTION TO TRY THE DEFENDANT WITHOUT A JURY WHEN THE DEFENDANT NEVER WAIVED [HER] RIGHT TO A JURY TRIAL IN WRITING.

{¶5} In her sole assignment of error, appellant argues that the trial court lacked jurisdiction to try her case where the record fails to show that she waived her right to a jury trial in writing.

{¶6} R.C. 2945.05, which provides for jury trial waivers, reads in relevant part as follows:

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. \* \* \*

Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel. Such waiver may be withdrawn by the defendant at any time before the commencement of the trial.

{¶7} In *State v. Tate* (1979), 59 Ohio St.2d 50, syllabus, the Supreme Court of Ohio determined that when a defendant accused of a petty offense has the right to a trial

by jury, pleads not guilty, and also makes a jury demand, the record must show that he waived the right to a jury trial in writing in the manner provided under R.C. 2945.05 in order for the trial court to have jurisdiction to try the defendant without a jury. See also *State v. Issa*, 10th Dist. No. 05AP-406, 2005-Ohio-6756; *State ex rel. Jackson v. Dallman* (1994), 70 Ohio St.3d 261.

{¶8} In *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, the Supreme Court of Ohio held that in order to be valid, a waiver of the right to a trial by jury must meet five requirements. The waiver "must be (1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court." *Id.* at ¶9.

{¶9} The state concedes on appeal that the requirements of R.C. 2945.05 and of *Lomax* were never met and, therefore, the trial court erred in exercising jurisdiction.

{¶10} A review of the record indicates there is nothing within the record that demonstrates appellant ever waived her right to a trial by jury. The record does not reveal the existence of a written jury waiver, and the transcript of the proceedings does not reveal oral acknowledgement of a previously executed jury trial waiver.

{¶11} Accordingly, we find the trial court lacked jurisdiction to try appellant without a jury and therefore exercised its jurisdiction in error.

{¶12} Based upon the foregoing, appellant's single assignment of error is sustained. The judgment of the Franklin County Municipal Court is reversed. and this

matter is remanded to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed; cause remanded.*

BRYANT and SADLER, JJ., concur.

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