

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

LOIS BULLOCK,

Appellant,

v.

Appellate Division (Criminal)

Case No.: 2007AP9000030AXXXMB

L.T. NO.: 2007MM004099AXXXWB

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed: Feb. 13, 2008

Appeal from Judge Nelson E. Bailey,
County Court in and for Palm Beach County.

For Appellant: David John McPherrin, Esq., Office of the Public Defender, 421 Third Street, 6th Floor, West Palm Beach, Florida 33401.

For Appellee: Michelle Zieba, Esq., Office of the State Attorney, 401 N. Dixie Highway, West Palm Beach, Florida 33401

The lower court's decision is hereby REVERSED AND REMANDED.

MILLER, GARRISON, and LABARGA, JJ. concur.

Following a non-jury trial, the trial court entered a final judgment against Appellant on the charge of criminal mischief. Appellant appeals the trial court's decision to proceed to a non-jury trial after an insufficient waiver of the Appellant's right to a jury trial. This court reviews this appeal de novo.

During the trial, the trial court, Appellant and her defense counsel engaged in the following colloquy:

THE COURT: Lois Bullock. Combination Final Hearing and Trial.

Are you – now you are having your Final Hearing now one way or the other, but the Trial itself do you want that to be here at the same time?

MS. BULLOCK: Yes, sir.

THE COURT: Do you understand that will be without a jury?

MS. BULLOCK: Yes, sir.

THE COURT: You are agreeing to that?

MS. BULLOCK: Yes, sir.

THE COURT: Do you understand you have an absolute right to a jury trial if you choose that? You can have it.

MS. BULLOCK: Yes, sir.

THE COURT: You want to go now non-jury?

MS. BULLOCK: Yes.

MR. BERMAN: Judge, she still wants to have her trial, right?

THE COURT: Yes. We're doing the Final Hearing anyway, but I just wanted to confirm she wanted the trial.

(T. 2-3). The issue in the instant case is whether the colloquy between the trial court judge and the Appellant was sufficient for the court to establish that Appellant's oral waiver of jury trial was knowing, voluntary and intelligent. The Florida Supreme Court has indicated that the better practice is to have a defendant make both an oral and a written waiver of her right to jury trial. *State v. Upton*, 658 So. 2d 86, 87 (Fla. 1995); *Tucker v. State*, 559 So. 2d 218, 220 (Fla. 1990). An oral waiver alone, however, may suffice. See *Kelly v. State*, 797 So. 2d 1278, 1280 (Fla. 4th DCA 2001); *Sinkfield v. State*, 681 So. 2d 838, 839 (Fla. 4th DCA 1996).

A valid oral waiver must meet the following two requirements: 1) the court must engage the defendant in a colloquy in which the court establishes that the defendant's waiver is

voluntary, knowing and intelligent; Tucker, 559 So. 2d at 220; Kelly, 797 So. 2d at 1280; *Sinkfield*, 681 So. 2d at 839, and 2) the inquiry must affirmatively appear on the record; see *Upton*, 658 So. 2d at 87; *Ziegler v. State*, 647 So. 2d 292, 293 (Fla. 2d DCA 1994); *Tosta v. State*, 352 So. 2d 526, 527 (Fla. 4th DCA 1977). Further, Florida courts have also held that “[a]n appropriate oral colloquy will focus defendant's attention on the value of jury trial and should make a defendant aware of the likely consequences of the waiver.” *Upton*, 658 So. 2d at 87; Tucker, 559 So. 2d at 220; Ziegler, 647 So. 2d at 293. The trial court must personally inquire of the defendant whether she understands her right to jury trial and has voluntarily agreed to waive it. *Schuler v. State*, 463 So. 2d 464 (Fla. 2d DCA 1985); *Cirio v. State*, 440 So. 2d 650 (Fla. 2d DCA 1983). For a waiver to be valid, the record must show that the defendant understood what was meant by waiver of jury trial. *Tosta*, 352 So.2d at 527.

In the instant case there is no evidence from the record that either the trial court or Appellant's defense counsel explained to the Appellant the value of a jury trial. The trial court did not apprise Appellant of the consequences of her waiver or made an inquiry to assess whether her waiver was knowingly, voluntarily and intelligently made. When a trial court fails to personally inquire of the defendant in open court to ascertain whether she has knowingly, intelligently and voluntarily waived her right to jury trial, the defendant is entitled to reversal of the conviction. *Schuler*, 463 So. 2d at 464.

Accordingly, since Appellant's oral waiver of jury trial was invalid, her judgment and conviction is reversed and remanded for a new trial.