

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,)	No. ED109608
)	
Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	1822-CR02383-01
)	
JACOB HILBERT,)	Honorable Jason M. Sengheiser
)	
Appellant.)	Filed: June 28, 2022

This bench-trying criminal case involves whether a defendant’s constitutional right to a jury trial was violated as a result of the trial court’s failure to obtain an unmistakably clear and constitutionally sufficient waiver of that right from the defendant. Every criminal defendant in Missouri – including a defendant like the one in this case who has been charged with very serious felonies – has a federal and state constitutional right to have a jury decide his guilt or innocence.¹ Although a defendant in a felony case may waive his right to a jury trial with consent of the court, the waiver is constitutionally sufficient only if the record shows with unmistakable clarity that the waiver was made by the defendant himself knowingly, voluntarily, and intelligently; in other words, the record must show “[a] fully informed and publicly acknowledged consent of the [defendant]” and “[a] personal communication of the defendant to the court that he chooses to relinquish the right [to a jury trial].”²

Jacob Hilbert (“Defendant”) appeals the judgment, following a bench trial, finding him guilty of two counts of first-degree statutory sodomy and one count of first-degree child molestation, and sentencing him to a total of thirty years of imprisonment. On appeal, Defendant argues the trial court plainly erred by proceeding to a bench trial without an unmistakably clear and constitutionally sufficient waiver from Defendant of his right to a jury trial.

CONVICTIONS AND SENTENCES VACATED AND CASE REMANDED FOR A NEW TRIAL.

¹ See *State v. Williams*, 417 S.W.3d 360, 362 (Mo. App. E.D. 2013); see also *Duncan v. State of La.*, 391 U.S. 145, 154, 157-58 (1968) (holding “the right to jury trial in serious criminal cases is a fundamental right and hence must be recognized by the States as part of their obligation to extend due process of law to all persons within their jurisdiction” and that “in the American States, as in the federal judicial system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants”); U.S. Const. amends. VI and XIV; Mo. Const. art. 1, sections 18(a) and 22(a).

² See *Taylor v. Illinois*, 484 U.S. 400, 417-18, 418 n.24 (1988) (final set of bracketed alterations in original) (partially quoting *Doughty v. State*, 470 N.E.2d 69, 70 (Ind. 1984)); *State v. Baxter*, 204 S.W.3d 650, 653 (Mo. banc 2006) (citing Mo. Const. art. 1, section 22(a)); *Williams*, 417 S.W.3d at 362-63, 364; see also Missouri Supreme Court Rule 27.01(b) (effective from January 1, 1980 to June 30, 2022).

Division Two holds: Because we find the trial court plainly erred in holding a bench trial without an unmistakably clear and constitutionally sufficient waiver from Defendant of his right to a jury trial, we vacate Defendant's convictions and sentences, and we remand this case for a new trial.

Opinion by: Robert M. Clayton III, P.J.

Gary M. Gaertner, Jr., J., concurs.

Thomas C. Clark II, J., dissents in a separate opinion.

Attorney for Appellants: Shawn A. Goulet, Joel J. Schwartz, Nathan T. Swanson

Attorney for Respondent: Eric S. Schmitt, Daniel N. McPherson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.