

NOT DESIGNATED FOR PUBLICATION

No. 124,728

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MATTHEW RAYMOND WALKER,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; MICHAEL A. RUSSELL, judge. Opinion filed September 29, 2023. Affirmed.

Randall L. Hodgkinson, of Kansas Appellate Defender Office, for appellant.

Garett C. Relph, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before HILL, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: A jury acquitted Matthew Raymond Walker of intentional second-degree murder but convicted him of criminal possession of a firearm. In the jury instructions, Walker stipulated to two elements of the firearm charge. Walker now appeals his conviction, claiming the district court erred by accepting the stipulation to elements of the crime without first obtaining a valid jury trial waiver on the record. We agree that the district court erred by failing to obtain a jury waiver but find the error is harmless and therefore affirm Walker's conviction.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Walker with second-degree intentional murder and criminal possession of a firearm for an incident that occurred on May 27, 2020. At trial, Walker admitted to having a gun and shooting the decedent, claiming self-defense. As noted at the outset, Walker was acquitted of the murder, so we focus on the gun charge. To prove the crime of conviction, the State had to prove beyond a reasonable doubt that Walker (1) possessed a firearm; (2) had been convicted of a felony within the five years preceding possession of the firearm; (3) was not in possession of a firearm at the time of the prior crime; and (4) possessed a firearm on or about May 27, 2020, in Wyandotte County, Kansas. See K.S.A. 2019 Supp. 21-6304(a)(2). Walker signed a stipulation before trial that he was legally prohibited from possessing a firearm on the date of the shooting. Following discussion with counsel regarding instructing the jury about the stipulation, the jury was instructed as follows:

"The following facts have been agreed to by the parties and are to be considered by you as true.

" 1. The defendant, Matthew Walker, within the preceding five years, had been convicted of a felony offense.

"2. He was not found to be in possession of a firearm at the time of the prior offense."

Thus, the State needed only to present evidence proving, beyond a reasonable doubt, that Walker possessed a firearm in Wyandotte County on May 27, 2020. Walker's testimony established these two remaining elements of the offense, and Walker does not challenge the sufficiency of the evidence on those elements. Walker's complaint is that the district court did obtain a jury trial waiver on the stipulated elements of the crime and

never explained to Walker that by stipulating to elements of the firearm charge, he was waiving this right to a jury trial on those elements.

The jury found Walker guilty of criminal possession of a firearm by a convicted felon, and the district court sentenced Walker to 21 months in prison followed by 12 months' postrelease supervision. Walker timely appeals.

ANALYSIS

The district court erred in accepting Walker's stipulation to elements of criminal possession of a firearm without obtaining a valid jury trial waiver.

Whether Walker's "stipulation constituted a knowing and voluntary waiver of his right to a jury trial on certain elements of the crime charged is a question of law subject to unlimited review." See *State v. Johnson*, 310 Kan. 909, 918, 453 P.3d 281 (2019). Walker raised this issue for the first time on appeal, but he asserts it is properly before this court because the issue is necessary to serve the ends of justice or to prevent the denial of fundamental rights. The State does not respond to the preservation issue. This court addressed the same issue for the first time on appeal in *State v. Johnson*, 46 Kan. App. 2d 387, 397, 264 P.3d 1018 (2011), to prevent the denial of fundamental rights. The decision to address an unpreserved error is prudential, and we believe it appropriate to address Walker's claim as it impacts his fundamental right to a jury trial. See *State v. Gray*, 311 Kan. 164, 170, 459 P.3d 165 (2020).

Our Supreme Court has addressed the very issue of whether a jury trial waiver must accompany a defendant's stipulation to an element of a charged crime, explaining:

"The Fifth and Sixth Amendments to the United States Constitution 'entitle [] criminal defendant[s] to "a jury determination that [the defendant] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.'" And when a defendant

stipulates to an element of a crime, the defendant has effectively given up his or her right to a jury trial on that element.

"We have consistently held that jury trial waivers 'should be strictly construed to ensure the defendant has every opportunity to receive a fair and impartial trial by jury.' And because every defendant has the fundamental right to a jury trial, courts cannot accept a jury trial waiver "'unless the defendant, after being advised by the court of his right to trial by jury, personally waives his right to trial by jury, either in writing or in open court for the record.'" [Citations omitted.]" *Johnson*, 310 Kan. at 918-19.

As succinctly summarized by the Supreme Court, "When a defendant stipulates to an element of a crime, the defendant has effectively waived his or her right to a jury determination of that element. Thus, a valid jury trial waiver—limited to the stipulated element or elements—is required." 310 Kan. 909, Syl. ¶ 3.

Here, the district court erred when it failed to obtain a jury trial waiver from Walker before accepting his stipulation to two elements of the crime for which he was convicted.

The failure to obtain a jury waiver from Walker was harmless error.

Our Supreme Court recently reaffirmed its ruling in *Johnson* that the district court must obtain a constitutionally sufficient jury trial waiver before a defendant stipulates to an element of a charged crime. *State v. Bentley*, 317 Kan. 222, 232, 526 P.3d 1060 (2023). But more significantly, *Bentley* held that the failure to obtain a constitutionally sufficient jury trial waiver before the defendant stipulates to only some elements of a crime is not structural error and should be reviewed for harmlessness. That is, the party benefitting from the error must demonstrate "'beyond a reasonable doubt the error will not or did not affect the trial's outcome in light of the entire record, i.e., when there is no reasonable possibility the error contributed to the verdict.'" 317 Kan. at 234.

The *Bentley* court determined Bentley would have stipulated to the elements of the crimes even if he had been informed of the right to trial by jury on the State's evidence. In reaching this conclusion, our Supreme Court noted testimony suggesting the stipulation was trial strategy to prevent the jury from hearing Bentley's criminal history, along with pretrial motions asking the court to "'limine out any reference to [Bentley's] criminal history.'" 317 Kan. at 235-36. Our Supreme Court found beyond a reasonable doubt that the district court's failure to obtain a sufficient jury trial waiver did not affect Bentley's decision to enter the stipulation and the error, therefore, did not affect the trial's outcome. Bentley's conviction was affirmed. 317 Kan. at 236.

The State must prove beyond a reasonable doubt the district court's failure to obtain a jury trial waiver did not affect the trial's outcome considering the entire record. See 317 Kan. at 232-34. The colloquy between the district court and counsel for both parties, combined with our review of the entire trial record, convinces us beyond a reasonable doubt that the trial court's error was harmless.

During the trial, the prosecutor moved for the admission of multiple documentary exhibits, including Exhibit 31, which was a certified journal entry of Walker's felony methamphetamine conviction. Walker's counsel objected to the admission of the journal entry, stating, "[T]he purpose of the stipulation, is to prevent the jury from knowing about the prior . . . felony." After some discussion, the prosecutor and Walker's defense counsel agreed with the district court's ruling that the record of conviction would be admitted for appeal purposes only and would not be provided to the jury.

After the defense rested its case, the district judge again discussed the stipulation with the parties:

"THE COURT: Okay. I want to clear up this stipulation. The way you have the stipulation written . . . it's signed, which I have, is 'Mr. Walker stipulates that pursuant to

K.S.A. 21-6304(a)(2), he was legally prohibited from possessing a firearm on May 27th, 2020.'

"As I indicated last night, the jury is never going to be informed of what the statute that he is—allegedly committed, that being the 21-6304. The State has to prove that the defendant possessed a weapon, but they also have to prove that he was within five years preceding such possession had been convicted of a felony, and that he was found not to be in possession of a firearm at the time of the prior crime.

"In typical cases—and this is what I'm trying to clear up what your intent was—I would give an instruction that the parties are stipulating that within the past five years—or within five years he's been convicted of a felony. Clearly, that doesn't inform the jury of the nature of the conviction other than it's a felony, which is what's required, and that he was not found to be in possession of a firearm at the time of the prior crime.

"Is that what the two parties were intending or not?"

"[DEFENSE COUNSEL]: Judge, that is what I was intending. By inserting the statute number, my intention was to actually go further and to keep the jury from knowing that he has had a felony in the past five years. That—and I understand that that's—typically it would be that we would stipulate that the felony exists and the State would [not] be able to get into the facts of the felony. I am asking that the Court go further, allow my client to stipulate and have that element satisfied without letting the jury know that he was a felon.

....

"THE COURT: Okay.

"I guess I'm trying to—PIK requires him to—typically under a stipulation, the defendant stipulates to the five years, or whatever the time period is, and that he's been convicted of a felony. And that obviously protects him from the jury knowing the nature or if there's been a number of convictions. That's what the stipulation is for, is to prohibit.

"But the charge by itself says conviction—'criminal possession of a firearm by a convicted felon.' And that's what they're going to be informed. That's what the Court normally—that's the title. So that they're going to be informed at least he's been convicted of a felony. And then the State—so basically he was not found to be in possession of a firearm at the time of the prior crime. The State still has to prove that he possessed fire—or that weapon or that firearm on the 27th day of May, 2020, in Wyandotte County, Kansas.

....

"[DEFENSE COUNSEL]: Judge, I'm looking at my proposed instruction—and this was done before we had executed the stipulation. And so my proposed instruction on page 5 of 13 of my filing lists the possession of methamphetamine, which I would request not be given.

"My request, Judge, would be that stipulation satisfy what would be Instructions Number 1 and 2, and that the State only have to prove that the defendant possessed it on a date in Wyandotte County, Kansas."

This colloquy plainly shows there was a strategic purpose for the stipulation—to prevent the jury from hearing details about Walker's prior felony conviction. In the absence of the stipulation, the State would have to present the details of the actual felony conviction to the jury. That Walker also filed a motion in limine requesting, in part, the district court limit evidence allowed before the jury related to Walker's prior criminal record, including prior arrests or alleged bad acts, reflects the strategic importance to Walker of avoiding disclosure to the jury of the precise nature of his criminal history. The record also reflects Walker wanted the jury to know that the victim had illegal drugs in his system at the time he was killed. By stipulating to the required criminal history elements in the gun charge, Walker was able to keep the specifics of his criminal history—possession of methamphetamine—from the jury as it evaluated the second-degree murder charge.

The journal entry of conviction was admitted as an exhibit and easily establishes the first element of the stipulation, and the record shows it was not provided to the jury at Walker's insistence. The second stipulated fact—the absence of a firearm—may have required more testimony about the specifics of his conviction, but as recounted above, the purpose of the stipulation was to avoid any disclosure of those specifics to the jury. Given Walker's testimonial admission of the remaining elements of the offense and considering the importance Walker attached to avoiding disclosure of his criminal history, we fail to see how the district court error could have had any effect on the outcome of the trial.

Walker was clearly aware the information could have been presented to the jury and he did not want that to happen.

Like *Bentley*, the record here supports the conclusion that Walker would have stipulated to the elements of the crimes even if he had been properly informed of his right to trial by jury on the stipulated elements. We conclude, beyond a reasonable doubt, that the district court's failure to obtain a sufficient jury trial waiver was harmless error which did not affect Walker's decision to enter the stipulation and did not affect the trial's outcome.

Affirmed.