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DISTRICT I

January 13, 2026

To:

Hon. Laura Crivello
Circuit Court Judge
Electronic Notice

John D. Flynn
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Mark S. Rosen
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP1718-CR

State of Wisconsin v. Andrez Danielle Martina
(L.C. # 2021CF3735)

Before White, C.J., Donald, and Geenen, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Andrez Danielle Martina appeals a judgment convicting him of one count of first-degree intentional homicide, one count of physical abuse of a child by repeated acts causing death, one count of neglecting a child resulting in death, one count of child abuse—intentionally causing harm, and one count of being a felon in possession of a firearm. He also appeals from the order denying his postconviction motion for relief. Martina waived his right to a jury trial and was found guilty on all counts following a trial to the court. On appeal, Martina argues that he is entitled to a new trial because at the time he waived his right to a jury trial, the trial court failed to explicitly state that a panel of 12 jurors would have to agree on all of the elements of all of the crimes charged. Based upon our review of the briefs and the records, we conclude at conference

that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹
We affirm.

BACKGROUND

On May 4, 2022, an amended information charged Martina with one count of first-degree intentional homicide, one count of physical abuse of a child by repeated acts causing death, one count of neglecting a child resulting in death, one count of child abuse—intentionally causing harm, and one count of being a felon in possession of a firearm. The charges stemmed from the beating death of one of Martina’s grandsons and the physical abuse of another.

At one of Martina’s pretrial hearings, Martina informed the trial court that he wished to discharge his counsel. Counsel told the court that Martina expressed multiple times that he wanted to pursue a bench trial and counsel requested time to “explore the issue” with Martina. Martina ultimately did not discharge counsel. At the following hearing, counsel told the court that he “explored” the issue with Martina and he believed a bench trial was appropriate. The matter was scheduled for a waiver hearing.

At the hearing, Martina informed the trial court that he signed a “Waiver of Trial by Jury” form, but indicated that he needed more time to speak with his counsel. After conferring with counsel, counsel told the court that Martina was “adamant about the bench trial issue.” The court then engaged Martina in a colloquy where the court confirmed that Martina was of sound mind; Martina had discussed the waiver issue with counsel; and that counsel answered Martina’s

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

questions pertaining to waiver. The court also ensured that Martina understood that he had a right to have his case tried by a jury of 12 and “all 12 people would have to be satisfied beyond a reasonable doubt that you are guilty before you could be found guilty.” The court also confirmed that Martina understood that it would decide whether the State met its burden, that Martina was not coerced into giving up his right to a jury trial, and that Martina had sufficient discussions with his counsel about the waiver. Counsel also told the court that Martina’s decision was free and voluntary based upon their discussions. The court found that Martina made a free, voluntary, and intelligent choice and granted the request to waive a jury trial.

The matter proceeded to a bench trial where the trial court found Martina guilty of all counts charged in the amended complaint. The court sentenced Martina to life in prison without extended supervision.

Martina then filed a postconviction motion arguing that he was entitled to a new trial because the trial court conducted a defective waiver colloquy, rendering his jury trial waiver invalid. Martina alleged that the trial court never indicated that a jury would have to agree on all of the specific elements of all of the charged crimes. Following a hearing where trial counsel and Martina both testified, the postconviction court denied the motion. Citing to the colloquy, Martina’s criminal history, and what it considered to be Martina’s lack of credibility, the postconviction court found that Martina was sufficiently aware that a unanimous jury would have to find him guilty of the specifically charged crimes. This appeal follows.

DISCUSSION

“A criminal defendant’s right to a trial by jury is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 7 of the Wisconsin Constitution.” *State v.*

Grant, 230 Wis. 2d 90, 95, 601 N.W.2d 8 (Ct. App. 1999). A defendant may waive the right to a jury trial in favor of a trial to the court. *See* WIS. STAT. § 972.02(1). The trial court must conduct a personal colloquy with the defendant on the record to ensure that a defendant’s decision to waive the right to a jury trial is knowing and voluntary. *See State v. Anderson*, 2002 WI 7, ¶23, 249 Wis. 2d 586, 638 N.W.2d 301. The colloquy must show that the defendant “was aware of the nature of the jury trial, such that it consists of a panel of 12 people [who] must agree on all elements of the crime charged.” *Id.*, ¶24. If a defendant does not understand this unanimity requirement, the jury waiver is invalid. *See id.*

A defendant who contends that he or she did not knowingly and voluntarily waive the right to a jury trial has the initial burden of showing that the colloquy was defective and that he or she did not understand the information that should have been provided. *See Grant*, 230 Wis. 2d at 98-99. The burden then shifts to the State to show by clear and convincing evidence that the defendant’s jury waiver was knowing and voluntary. *Id.* at 99. “We will uphold the [trial] court’s findings of fact unless they are clearly erroneous.” *State v. Miller*, 2012 WI 61, ¶26, 341 Wis. 2d 307, 815 N.W.2d 349. Whether the jury waiver was valid based on the facts found by the trial court is a question of law that we review de novo. *Anderson*, 249 Wis. 2d 586, ¶12.

Martina contends that his waiver was invalid because the trial court did not explicitly state that a panel of 12 jurors would have to agree on all of the elements of all of the crimes charged. Martina’s argument is flawed.

As the State notes, Martina’s argument centers on one sentence in the supreme court’s *Anderson* decision which states that the trial court’s colloquy must ascertain many things,

including whether the defendant “was aware of the nature of a jury trial, such that it consists of a panel of 12 people that must agree on all elements of the crime charged.” *Id.*, 249 Wis. 2d 586, ¶24. Martina’s argument ignores the remainder of the supreme court’s decision, as well as additional well-established case law, which hold that the primary purpose of the colloquy is to ensure that the defendant understands the jury unanimity requirement. *See State v. Resio*, 148 Wis. 2d 687, 695-96, 436 N.W.2d 603 (1989) (stating that “[w]hen a defendant waives the right to a jury trial understanding that his or her guilt or innocence will be determined by a single judge rather than by a group of [12] lay persons, that waiver is valid and effective”).

Here, the record supports the postconviction court’s finding that Martina’s waiver was valid. During the colloquy, Martina confirmed that he understood the unanimity requirement and that he had sufficient discussions with trial counsel about his decision to proceed with a bench trial. At the postconviction hearing, trial counsel testified that he explained the pros and cons of proceeding with a bench trial, the differences between a bench trial and a jury trial, and each of the charges to Martina. The postconviction court also made a reasonable inference that Martina’s significant criminal history rendered him familiar with the right to a jury trial. Martina had entered multiple pleas where he was informed of his constitutional rights and signed plea waiver forms explaining that the right to a jury trial required all 12 jurors to agree that the State met its burden beyond a reasonable doubt. Though “not dispositive,” the postconviction court appropriately considered Martina’s familiarity with the court system to infer that he had some knowledge of his constitutional rights, including the right to a unanimous jury verdict. *See State v. Lopez*, 2010 WI App 153, ¶12, 330 Wis. 2d 487, 792 N.W.2d 199. The postconviction court also found that Martina’s testimony lacked credibility. Accordingly, we agree that the waiver was valid.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals