

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0808

STATE OF LOUISIANA

VERSUS

ANTHONY MAIZE

DATE OF JUDGMENT: November 2, 2007

ON APPEAL FROM THE SIXTEENTH JUDICIAL DISTRICT COURT
(NUMBER 02-159,819), PARISH OF ST. MARY
STATE OF LOUISIANA

HONORABLE GERARD B. WATTIGNY, JUDGE

* * * * *

J. Phil Haney
District Attorney
Jeffrey J. Trosclair
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Counsel for Appellee
State of Louisiana

Susan K. Jones
Franklin, Louisiana

Counsel for Appellant
Anthony Maize

* * * * *

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: AFFIRMED.

[Handwritten signatures and initials]

KUHN, J.

This matter is before us following a remand by the court to the trial court, ordering an evidentiary hearing on the issue of whether defendant, Anthony Maize, knowingly and intelligently waived his right to a jury trial. Defendant's conviction and sentence for one count of indecent behavior with a juvenile were conditionally affirmed in *State v. Maize*, 2004-2095 (La. App. 1st Cir. 11/4/05), 913 So.2d 893 (unpublished), pending the outcome of the issue of validity of defendant's jury trial waiver. After holding the evidentiary hearing, the trial court concluded that defendant understood the waiver of the jury trial and knowingly and intelligently waived his right to a jury trial. Defendant appeals the adverse ruling. We affirm.

Gary LeGros, who was the trial counsel for defendant, testified that he spoke with defendant about waiving a jury trial prior to the commencement of trial. He said that he explained to defendant that he thought defendant stood a better chance with a judge hearing the case as opposed to a jury and suggested defendant waive his right to a jury trial. Defendant was present in court when his right to a jury trial was waived, and LeGros stated that this waiver had been discussed prior to that appearance in court.

LeGros recalled that defendant was able to participate in his own defense at trial and never gave any indication that he lacked any understanding or was not willing to proceed without a jury. He explained that had he thought defendant did not understand this right, they would have proceeded with a trial by jury. LeGros stated that as a general procedure in his criminal practice, when there was any prospect of a client misunderstanding a waiver, he felt it was better to err on the

side of caution and not waive a jury trial. According to LeGros, he had more than one off-the-record conversation with defendant about his right to a jury trial and the waiver of that right.

The only evidence defendant presented was the testimony of his brother, Charles Maize. Charles Maize testified that he spoke with LeGros about having a jury trial. He claimed he told LeGros that defendant lacked the capability to understand and that he felt defendant should have a jury trial. Charles Maize initially disputed that LeGros explained the waiver of a jury trial to defendant; however, Charles Maize admitted that he did not know what LeGros explained to defendant.

In its written reasons for judgment, the trial court found LeGros's testimony reliable and concluded that LeGros had discussed the waiver of the jury trial with defendant on more than one occasion, placing particular emphasis on LeGros's explanation that he would not have waived the jury trial if he felt that his client did not understand that waiver. The trial court expressly noted that Charles Maize's testimony "lends very little weight and very little credibility," commenting that while Charles Maize believed his brother did not waive his right to a jury trial, he provided no facts in support of that belief, and he was not present during all discussions between LeGros and defendant. Based on these findings, the trial court concluded that defendant knowingly and intelligently waived his right to a jury trial.

Louisiana Code of Criminal Procedure article 780(A) provides that a defendant charged with an offense other than one punishable by death may "knowingly and intelligently waive a trial by jury and elect to be tried by the

judge." Credibility determinations are factual issues to be resolved by the trier of fact, which should not be disturbed on appeal in the absence of manifest error. *See State v. Davis*, 2000-2685, p. 6 (La. App. 1st Cir. 11/9/01), 818 So.2d 76, 80.

Reviewing the record, we find no error in the trial court's reliance on LeGros's testimony, which it found to be credible. LeGros's testimony that defendant was informed of his right to a trial by jury, that defendant decided to waive that right in light of advice given by LeGros, and that he would not have allowed a waiver of the right had he not been satisfied that defendant understood such a waiver supports the trial court's conclusion.¹ As such, there is no error.

Finding no error in the trial court's determination that defendant knowingly and intelligently waived his right to a jury trial, we affirm the trial court's ruling as well as defendant's conviction and sentence.

RULING, CONVICTION, AND SENTENCE AFFIRMED.

¹ Defendant was charged by bill of information with three counts of indecent behavior with a juvenile, violations of La. R.S. 14:81 (Counts 1-3), and two counts of molestation of a juvenile, violations of La. R.S. 14:81.2 (Counts 4-5). The trial court determined defendant was guilty as to Count 3 and acquitted defendant of all remaining counts.